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TRUST INDENTURE

among

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

TREASURER OF THE STATE OF CALIFORNIA, as Trustee

and

U.S. BANK, N.A., as Co-Trustee

authorizing and securing

POWER SUPPLY REVENUE BONDS

Dated as of October 1, 2002

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## **TRUST INDENTURE**

### **authorizing and securing**

### **POWER SUPPLY REVENUE BONDS**

This TRUST INDENTURE is dated as of October 1, 2002, among the STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES, existing pursuant to Article 1 (commencing with Section 120) of Chapter 2 of Division 1 of the California Water Code, the TREASURER OF THE STATE OF CALIFORNIA, as Trustee, and U.S. BANK, N.A., as Co-Trustee. Terms used, but not defined, in the following preambles shall have the meanings ascribed thereto in Section 101.

WHEREAS, the Act was adopted to permit the State to participate in markets for the purchase and sale of Power; and

WHEREAS, the Department is authorized pursuant to the Act, among other things, to purchase and sell Power and provide for its delivery; and

WHEREAS, to pay the costs of Power and transmission, scheduling, and other related expenses, to reimburse such costs previously paid, to reimburse the General Fund of the State for advances made to the Department from appropriations, to reimburse General Fund moneys expended by the Department pursuant to the 2001 Emergency Measures, to pay the principal of and interest on Interim Financing Notes, and for certain other purposes, the Department is authorized pursuant to the Act to issue its bonds and enter into other obligations; and

WHEREAS, the bonds and other obligations of the Department authorized by the Act shall be special obligations of the Department payable solely from the Electric Power Fund and neither the full faith and credit nor the taxing power of the State shall be pledged thereto;

NOW, THEREFORE, in consideration of the mutual agreements contained in this Indenture and other good and valuable consideration, the receipt of which is hereby acknowledged, the Department, the Trustee and the Co-Trustee agree as set forth herein.

## ARTICLE I

### DEFINITIONS AND STATUTORY AUTHORITY

**101. Definitions.** The following terms shall, for all purposes of the Indenture, have the following meanings:

“**Accreted Value**” means, with respect to any Capital Appreciation Bonds, (i) as of any Valuation Date, the amount set forth for such date in the Supplemental Indenture authorizing such Capital Appreciation Bonds and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, and (2) the difference between the Accreted Values for such Valuation Dates. Accreted Value shall be computed on a 30/360-day basis.

“**Act**” means Division 27 (commencing with Section 80000) of the State Water Code, as amended from time to time.

“**Additional Emergency Measures**” or “**Emergency Measures**” means Executive Order No. D-56-02 dated May 23, 2002, or any Proclamation or Order of the Governor of the State hereafter issued pursuant to the California Emergency Services Act (Chapter 7, Division 1, Title 2 of the California Government Code, as amended) (including, but not limited to, any regulations issued pursuant thereto) adopted in response to or in anticipation of the need to assure the availability of power to retail end-use customers in the State due to the inability or failure of an Electrical Corporation to purchase such power following the end of the Department’s authority to enter into new Power Supply Contracts under Assembly Bill 1X.

“**Administrative Cost Account**” means the Account by that name established by Section 502.

“**Aggregate Debt Service**” means, for any period and as of any date of calculation, the sum of the amounts of Debt Service for such period with respect to all Series of Bonds.

“**Alternate Debt Service Reserve Account Deposit**” means any irrevocable surety bond, insurance policy, letter of credit or any other similar obligation provided to the Trustee as a substitute for the deposit of cash and/or Authorized Investments, or another Alternate Debt Service Reserve Account Deposit, in the Debt Service Reserve Account pursuant to subsection 6 of Section 507.

“**Assembly Bill 1X**” means Chapter 4 of the Statutes of 2001 (AB 1 of the First Extraordinary Session) of the State, as amended from time to time, including, but not limited to, Chapter 9 of the Statutes of 2001 (SB 31 of the First Extraordinary Session).

“**Authorized Investments**” means and includes any of the following securities, if and to the extent the same are at the time legal for investment of the Department’s funds

pursuant to any law, and to the extent permitted under any applicable regulation, guideline and policy of the Department, as each is in effect from time to time:

(i) bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest;

(ii) bonds or interest-bearing notes or obligations that are guaranteed as to principal and interest by a federal agency of the United States;

(iii) bonds of the State or bonds for which the faith and credit of the State are pledged for the payment of principal and interest;

(iv) bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the State, municipal utility district or school district of the State;

(v) bonds, consolidated bonds, collateral trust debentures, consolidated debentures or other obligations issued by general land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, stocks, bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act, as amended, and the bonds of any federal home loan bank established under said act, obligations of the Federal Home Loan Mortgage Corporation, and bonds, notes and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended;

(vi) commercial paper rated within the top Rating Category by a Rating Agency and issued by corporations (1) organized and operating within the United States, (2) having total assets in excess of \$500,000,000 and (3) approved by the Pooled Money Investment Board of the State, provided, however that eligible commercial paper may not exceed one hundred eighty (180) days' maturity, represent more than 10% of the outstanding paper of an issuing corporation nor exceed 30% of the resources of an investment program, and that at the request of the Department, such investment shall be secured by the issuer by depositing with the Trustee securities authorized by Section 53651 of the California Government Code of a market value of at least 10% in excess of the amount of the Department's investment;

(vii) bills of exchange or time drafts drawn on and accepted by a commercial bank the general obligations of which are rated within the top two Rating Categories by a Rating Agency, otherwise known as banker's acceptances, which are eligible for purchase by the Federal Reserve System;



(viii) negotiable certificates of deposit issued by a nationally or state-chartered bank or savings and loan association or by a state-licensed branch of a foreign bank which, to the extent they are not insured by federal deposit insurance, are issued by an institution the general obligations of which are rated in one of the top two Rating Categories by a Rating Agency;

(ix) bonds, debentures and notes issued by corporations organized and operating within the United States which securities are rated in one of the top two Rating Categories by a Rating Agency;

(x) interest-bearing accounts in state or national banks or in state or federal savings and loan associations having principal offices in the State, the deposits of which shall be secured at all times and in the same manner as state moneys are by law required to be secured;

(xi) deposits in the Surplus Money Investment Fund as referred to in the California Government Code;

(xii) repurchase agreements or reverse repurchase agreements, as such terms are defined in and pursuant to the terms of Section 16480.4 of the California Government Code;

(xiii) collateralized or uncollateralized investment agreements or other contractual arrangements with corporations, financial institutions or national associations within the United States, provided that the senior long-term debt of such corporations, institutions or associations is rated within the top two Rating Categories by a Rating Agency;

(xiv) money market funds that invest solely in obligations described in clause (i) of this definition; or

(xv) such other investments as may be authorized by a Supplemental Indenture, provided that each Rating Agency has confirmed in writing to the Trustee that the use of such additional investments will not, by itself, result in the withdrawal, suspension or downgrade of any rating issued by such Rating Agency with respect to any Outstanding Bonds.

**“Authorized Officer”** means the Director, any Deputy Director, the Chief, Division of Fiscal Services, the Deputy Controller, and the Chief Counsel, of the Department, and any other individual authorized by the Director to perform the act or sign the document in question.

**“Bank”** means any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank or savings and loan association chartered or organized under the laws of any state of the United States of America, or (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law, or domestic branch or agency of a foreign bank which

branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America.

“**Bond Charge**” has the same meaning as that term is defined in the 2002 Rate Agreement, including, without limitation, any Bond Charges imposed on power furnished by an Electric Service Provider (as defined in the 2002 Rate Agreement).

“**Bond Charge Collection Account**” means the account by that name established by Section 502.

“**Bond Charge Payment Account**” means the account by that name established by Section 502.

“**Bond Charge Revenues**” means Revenues received by the Department arising from Bond Charges.

“**Bond Related Costs**” has the same meaning as that term is defined in the 2002 Rate Agreement, and shall include the items of cost specified in subsection 3 of Section 506.

“**Bonds**” means any obligations, issued in any form of debt, authorized by the Indenture and secured by a pledge of and lien on the Trust Estate on a parity with each other and with Parity Obligations, including, but not limited to, bonds, notes, bond anticipation notes, and commercial paper, and, for the purposes set forth in subsection 8 of Section 311, the Interim Financing Notes, but such term shall not include any Subordinated Indebtedness or Subordinated Obligations.

“**Business Day**” means (a) any day of the year other than (i) a Saturday or Sunday, (ii) a State legal holiday, (iii) any day which shall be in the city of Sacramento, California, or the city in which the Co-Trustee or relevant office of any Paying Agent, Registrar or Securities Depository or, if any Bond is supported by an Enhancement Facility, the provider of such Enhancement Facility is located, a legal holiday or a day on which Banks in any of such cities are required or authorized by law or other government action to close, or (b) with respect to any Series of Bonds, as may be provided by Supplemental Indenture.

“**Capital Appreciation Bonds**” means Bonds as to which interest is payable only at the maturity or prior redemption of such Bonds; provided, however, that if any such Bonds are converted to or from Bonds as to which interest is payable periodically, such Bonds shall be deemed to be Capital Appreciation Bonds only after or until such conversion, as the case may be. For the purposes of (i) receiving payment of the Redemption Price if a Capital Appreciation Bond is redeemed prior to maturity, or (ii) computing the principal amount of Bonds held by the Owner of a Capital Appreciation Bond in giving to the Department or the Trustee any notice, consent, request, or demand pursuant to the Indenture for any purpose whatsoever, the principal amount of a Capital Appreciation Bond on any date shall be deemed to be its Accreted Value as of such date.

“**Commercial Paper**” means Bonds issued as part of a program of short-term Bonds having the characteristics of commercial paper in that (i) such Bonds have a stated maturity not later than 270 days from their date of issue and (ii) maturing Bonds of such program

may be paid with the proceeds of Bonds having the characteristics of Commercial Paper. Notwithstanding the foregoing, Commercial Paper may be paid with the proceeds of other Bonds.

“**Commission**” means the Public Utilities Commission of the State, or any successor to the rights, duties and obligations of the Commission under the Act.

“**Consultant**” means an accountant or firm of accountants (which may be the accountant or firm of accountants then serving as the auditor of the Department), or a management consultant or firm of management consultants, or an engineer or firm of engineers, which, in any case, shall be of recognized standing in the field of electric utility rate consulting, selected by the Department, and may be regularly retained to provide services to the Department but shall not be an officer or employee of the State.

“**Costs**” means costs, expenses and purposes for which Bonds may be issued under the Act, including, but not limited to, the following: (i) costs of Power and transmission, scheduling, and other related expenses incurred by the Department, including, but not limited to, all amounts payable by the Department, of whatever kind and nature, under and pursuant to Power Supply Contracts and costs of avoiding purchasing Power for retail end-use customers paid or incurred pursuant to an Additional Emergency Measure; (ii) reimbursement of expenditures made from the Electric Power Fund for such purposes; (iii) repayment to the General Fund of the State of appropriations made to the Electric Power Fund pursuant to Assembly Bill 1X or Senate Bill 7X, repayment to the General Fund of appropriations made to the Electric Power Fund after the effectiveness of Assembly Bill 1X for purposes of Division 27 of the State Water Code, and repayment of General Fund moneys expended by the Department pursuant to the 2001 Emergency Measures; (iv) costs of establishing or maintaining reserves required or permitted by the Indenture, including, but not limited to, debt service and operating reserves; (v) costs of issuing Bonds and Interim Financing Notes or costs incidental to their payment or security, including, but not limited to, fees, expenses, and costs payable, and reimbursements, under Enhancement Facilities and the Credit and Security Agreement; (vi) capitalized interest on Bonds; and (vii) payment of principal, interest, and redemption, tender or purchase price of any (a) Bonds issued by the Department for the payment of any Costs, (b) Bonds issued to refund other Bonds, or (c) any other bonds, notes, or other evidences of indebtedness issued by the Department for purposes of the Act, including the Interim Financing Notes. Notwithstanding the foregoing, Costs shall not include (1) depreciation or obsolescence charges or reserves therefor, (2) amortization of intangibles or other bookkeeping entries of a similar nature; or (3) any costs of the Department relating to a Separately Financed Program.

“**Co-Trustee**” means U.S. Bank, N.A., and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Indenture.

“**Counsel’s Opinion**” means an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the Department.

“**Credit and Security Agreement**” means the Credit and Security Agreement, dated as of June 26, 2001, among the State acting through the Department, various lenders and

Morgan Guaranty Trust Company of New York as agent for such lenders, pursuant to which the Interim Financing Notes were issued and are secured, as supplemented and amended from time to time.

“**Credit Facility Reimbursement Obligation**” has the meaning provided in subsection 4 of Section 311.

“**Debt Service**” means, for purposes of determining deposits to and balances required to be on deposit in the Bond Charge Payment Account, the Debt Service Reserve Requirement, and the additional Bonds test of paragraph (h) of subsection 2 of Section 202, for any period and as of any date of calculation, with respect to any Outstanding Bonds, an amount equal to the sum of (i) interest accruing during such period on such Bonds, except to the extent that such interest is to be paid from deposits in the Bond Charge Payment Account made from the proceeds of Bonds or Subordinated Indebtedness, and (ii) that portion of each Principal Installment for such Bonds which would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for such Bonds (or, if there shall be no such preceding Principal Installment due date or such preceding Principal Installment due date is more than one (1) year prior to the due date of such Principal Installment, then from a date one (1) year (or, in the case of the initial Principal Installment due no later than December 31, 2004 for Bonds delivered in 2002, such period as may be provided by Supplemental Indenture) preceding the due date of such Principal Installment or from the date of issuance of such Bonds, whichever date is later). For purposes of such calculations, the following assumptions are to be used:

(i) such interest and Principal Installments shall be calculated on the assumptions that (a) no Bonds (except for Option Bonds actually tendered for payment and not purchased in lieu of redemption prior to the redemption date thereof) Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of each Principal Installment on the due date thereof and (b) the principal amount of Option Bonds tendered for payment shall be deemed to be payable on the date required to be paid pursuant to such tender;

(ii) if 20% or more of the principal of such Bonds is not due until the final stated maturity of such Bonds, principal and interest on such Bonds may, at the option of the Department, written notice of which shall be signed by an Authorized Officer and filed with the Trustee, be treated as if such principal and interest were due based upon an amortization of principal resulting in approximately level debt service (principal and interest) over the respective terms of such Bonds;

(iii) interest accruing on Variable Rate Bonds during any future period shall be assumed to accrue at a rate equal to the greater of (a) 130% of the highest average interest rate on such Variable Rate Bonds in any calendar month during the twelve (12) calendar months ending with the month preceding the date of calculation, or such shorter period that such Variable Rate Bonds shall have been Outstanding, or (b) 4.0%;

(iv) the principal of Bonds issued as Commercial Paper will be treated as if such principal were due based upon level amortization of principal from the date of

calculation to the latest maturity date of any Bonds, and the interest on such Commercial Paper shall be calculated as if such Commercial Paper were Variable Rate Bonds;

(v) the principal and interest portions of the Accreted Value of Capital Appreciation Bonds becoming due at maturity or by virtue of a Sinking Fund Installment shall be included in the calculations of accrued and unpaid and accruing interest or Principal Installments in such manner and during such period of time as is specified in the Supplemental Resolution authorizing such Capital Appreciation Bonds;

(vi) notwithstanding paragraphs (iii) or (iv) above, if the Department, in connection with any Variable Rate Bonds or Commercial Paper, has entered into a Qualified Swap that provides that the Department is to pay to the counterparty an amount determined based upon a fixed rate of interest on such Outstanding principal amount of such Variable Rate Bonds or Commercial Paper, and that the counterparty is to pay to the Department an amount determined based upon a variable rate of interest on such Outstanding principal amount of such Variable Rate Bonds or Commercial Paper (a “**variable rate payment**”) or the amount by which the rate at which such Variable Rate Bonds or Commercial Paper bear interest exceeds a stated rate of interest or, if the Department has entered into a Qualified Swap that provides that the Department is to pay to the counterparty one variable rate payment and that the counterparty is to pay to the Department a different variable rate payment, for so long as and to the extent that such Qualified Swap remains in full force and effect it shall be assumed that such Variable Rate Bonds and Commercial Paper bear interest at a rate equal to the sum of (A) the fixed rate of interest to be paid by the Department or the rate in excess of which the counterparty is to make payment to the Department in accordance with such Qualified Swap, and (B) the greater of (if positive) (1) the average difference between the actual interest rate paid by the Department on such Variable Rate Bonds or Commercial Paper and the variable interest rate the relevant counterparty paid to the Department, taking into account all variable rate payments, during the twelve (12) calendar months ending with the calendar month preceding the date of calculation, or such shorter period that such Variable Rate Bonds or Commercial Paper shall have been Outstanding, and (2) the difference between the actual interest rate paid by the Department on such Variable Rate Bonds or Commercial Paper and the variable interest rate received from the relevant counterparty, taking into account all variable rate payments, as calculated at the end of the calendar month preceding the date of calculation;

(vii) if the Department, in connection with any fixed rate Bonds, has entered into a Qualified Swap that provides that the Department is to pay to the counterparty an amount determined based upon a variable rate of interest on the Outstanding principal amount of such Bonds, it shall be assumed that such Bonds bear interest at the variable rate of interest to be paid by the Department, with interest on such Bonds calculated as if they were Variable Rate Bonds as described in paragraph (iii) above; provided, however, if the counterparty is to pay to the Department a fixed rate of interest on the amount of such Bonds that is less than the fixed rate payable thereon by the Department, it shall be assumed that such Bonds bear additional interest at the rate which is the difference between the fixed rates payable by and to the Department; and

(viii) principal and interest payments on Bonds shall be excluded to the extent such payments are to be paid from amounts then currently on deposit with the Trustee or other Fiduciary in escrow specifically therefor and restricted to Defeasance Securities.

**“Debt Service Reserve Account”** means the account by that name established by Section 502.

**“Debt Service Reserve Requirement”** means, as of any date of calculation, an amount equal to Maximum Aggregate Annual Debt Service. In furtherance of the covenant of the Department contained in Section 612, for the purpose of calculating the Debt Service Reserve Requirement at the time of, and deposit to be made into the Debt Service Reserve Account in connection with, the issuance of the initial Series of Bonds (or more than one Series of Bonds delivered on the same date as the initial Series of Bonds) (collectively, the “initial Bonds”), Debt Service on the initial Bonds shall be calculated by assuming that the initial Bonds will mature in such amounts and at such times (with the initial Bonds assumed to bear interest as provided in the definition of Debt Service) as will result in substantially level debt service (to the extent contemplated by Section 612) on the initial Bonds, without regard to any additional Series of Bonds.

**“Defeasance Security”** means:

- (i) cash;
- (ii) an Authorized Investment specified in clause (i), (ii), (iii) or (v) of the definition thereof, which is not callable or redeemable at the option of the issuer thereof;
- (iii) an Authorized Investment specified in clause (iv) of the definition thereof (a **“Municipal Bond”**), which Municipal Bond is fully secured as to principal and interest by an irrevocable pledge of moneys or direct and general obligations of, or obligations guaranteed by, the United States of America, which moneys or obligations are segregated in trust and pledged for the benefit of the holder of the Municipal Bond, and which Municipal Bond is rated in the highest Rating Category by at least two Rating Agencies and provided, however, that such Municipal Bond is accompanied by a Counsel’s Opinion to the effect that such Municipal Bond is not subject to redemption prior to the date the proceeds of such Municipal Bond will be required for the purposes of the investment being made therein; or
- (iv) any other investment designated in a Supplemental Indenture as a Defeasance Security for purposes of defeasing the Bonds authorized by such Supplemental Indenture, provided that each Rating Agency has confirmed in writing to the Trustee that the use of such other investment will not, by itself, result in the withdrawal, suspension or downgrade of any rating issued by such Rating Agency with respect to any such Bonds to be defeased.

**“Department”** means the State of California Department of Water Resources, existing pursuant to Article 1 (commencing with Section 120) of Chapter 2 of Division 1 of the

California Water Code, or any successor to the rights, duties and obligations of the Department under the Act and the Indenture.

**“Direct Access Power Charge”** means any charge imposed by the Commission (by an order that is final and unappealable) on, and received by the Department from, any Person receiving power from an Electric Service Provider intended to recover the Department’s Revenue Requirements other than Bond Related Costs, and shall in no event include Bond Charges; provided, however, that Bond Charges may be separately imposed on such Persons.

**“Direct Access Power Charge Revenues”** means Revenues received by the Department arising from Direct Access Power Charges.

**“Director”** means the Director of Water Resources of the State, or any successor to the rights, duties and obligations of the Director under the Act and the Indenture.

**“Electrical Corporation”** has the same meaning as that term is defined in Section 218 of the Public Utilities Code.

**“Electric Power Fund”** means the fund by that name established by Section 502.

**“Electric Service Provider”** has the meaning given in the 2002 Rate Agreement.

**“Enabling Measures”** means, collectively, the Act and the Additional Emergency Measures, or any of them, as appropriate.

**“Enhancement Facility”** means any letter of credit, standby purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any other agreement, securing, providing liquidity for, supporting or enhancing Outstanding Bonds, or any combination of the foregoing, or any agreement relating to the reimbursement thereof whether or not such instrument or agreement has been drawn upon, obtained by the Department.

**“Events of Default”** means the events defined as such in Section 1001.

**“Excess Amounts”** has the meaning specified in Section 508.

**“Fiduciary”** or **“Fiduciaries”** means the Trustee, the Co-Trustee, any Registrar, any Paying Agent, or any or all of them, as may be appropriate.

**“Financing Documents”** means any resolution, indenture (including the Indenture), trust agreement, loan agreement, revolving credit agreement, reimbursement agreement, standby purchase agreement or other agreement or instrument adopted or entered into by the Department authorizing, securing or enhancing any evidence of indebtedness issued pursuant to the Act, including the Bonds, Parity Obligations and Subordinated Indebtedness, as from time to time amended or supplemented in accordance therewith.

**“Fiscal Year”** means the twelve-month period commencing on July 1 of each year; provided, however, that the Department may at any time adopt a different twelve-month

period as the Fiscal Year, in which case July 1, when used herein with reference to Fiscal Year, shall be construed to mean the first day of the first calendar month of such different Fiscal Year.

**“Indenture”** means this Indenture as from time to time amended or supplemented by Supplemental Indentures.

**“Interim Financing Notes”** means, collectively, the Department’s “Tax-Exempt Bonds” and “Taxable Bonds” issued and outstanding under the Credit and Security Agreement.

**“Liquidity Facility Reimbursement Obligation”** has the meaning provided in subsection 4 of Section 311.

**“Maximum Aggregate Annual Debt Service”** means, as of any date of calculation, an amount equal to the maximum Aggregate Debt Service coming due on Bonds then Outstanding in any calendar year thereafter, commencing with the then current calendar year, excluding interest to be paid from the proceeds of Bonds or Subordinated Indebtedness and on deposit in the Bond Charge Payment Account.

**“Minimum Operating Expense Available Balance”** means, at the time Revenue Requirements are submitted to the Commission pursuant to subsection 3 of Section 605, (i) for so long as the Department is procuring all or a portion of the Residual Net Short, \$1 billion, and (ii) thereafter, the maximum amount projected by the Department by which Operating Expenses exceed Power Charge Revenues during any one calendar month during that Revenue Requirement Period. Such projections shall be based on such assumptions as the Department deems to be appropriate after consultation with the Commission and may take into account a range of possible future outcomes.

**“Operating Account”** means the account by that name established by Section 502.

**“Operating Expenses”** means the following costs and expenses of the Department in connection with its activities as permitted under the Enabling Measures: (i) payments for the purchase of Power and the delivery of such Power including, but not limited to, amounts paid under short-term Power Supply Contracts, Priority Long Term Power Contracts and other long-term Power Supply Contracts, termination and liquidation damage payments thereunder, payments thereunder relating to emission costs and emission opportunity costs, amounts payable in respect of balance of month-ahead Power, hour-ahead Power and real time balancing Power, including in-market and out-of-market purchases, costs of transmission, distribution, scheduling, dispatch and other expenses of the Department in connection with the delivery of its Power, and costs of avoiding purchasing Power for retail end-use incurred pursuant to an Additional Emergency Measure; (ii) payments for or in connection with fuel to be used in the production of Power purchased by the Department, whether paid as a charge under a Power Supply Contract or a separate agreement for the purchase, transportation or storage of fuel for use in the generation of Power, including, but not limited to, termination and liquidated damage payments under fuel purchase agreements, payments under options or other fuel or electricity instruments, and payments under financial instruments relating to fuel costs or costs related to fuel costs; (iii) payments under any security agreements executed in connection with



Power Supply Contracts or in connection with agreements for the purchase, transportation and storage of fuel, or any other agreement, relating to the purchase of Power; (iv) reasonable administrative, general and overhead expenses and payments for employee benefits, including, but not limited to, payments to savings, pension, retirement, health and hospitalization funds; (v) insurance premiums including, but not limited to, bond and Qualified Swap insurance premiums; (vi) legal and engineering expenses; (vii) expenses for consulting and technical services; (viii) charges paid by the Department pursuant to any licenses, orders or mandates from any agency or regulatory body having lawful jurisdiction; (ix) any taxes, governmental charges, other similar costs and expenses required to be paid by the Department, and costs required by the California Independent System Operator to be paid by the Department or imposed on the Department by regulatory or other governmental requirements; (x) costs of complying with any arbitrage restrictions or rebate requirements relating to the Bonds under Section 148 of the Internal Revenue Code of 1986 as amended, or a successor statute, and applicable regulations thereunder; (xi) such other costs and expenses as may be provided for in a Rate Agreement as being recoverable as part of Revenue Requirements; and (xii) such other costs and expenses with respect to the sale of Power to local publicly owned electric utilities, as defined in Assembly Bill 1X, or in connection with the exchange of Power or the sale, transfer or other disposition of Power not required for use within the State as permitted by the Act, which would constitute current operating expenses under generally accepted accounting principles or statutory accounting principles as in effect from time to time and applicable to governmental units such as the Department. Notwithstanding the foregoing, Operating Expenses shall not include (a) any repayments to the General Fund of the State of advances made to the Department from amounts appropriated to the Electric Power Fund or interest thereon payable at the Pooled Money Investment Rate; (b) principal, Redemption Price and Purchase Price of and interest on Bonds; (c) debt service on or payments under Parity Obligations, Subordinated Indebtedness or Subordinated Obligations; (d) principal of and interest on the Interim Financing Notes and other payments required to be made by the Department under the Credit and Security Agreement; (e) depreciation or obsolescence charges or reserves therefor; (f) amortization of intangibles or other bookkeeping entries of a similar nature; (g) any amounts paid from Bond Charge Revenues pursuant to subsection 1 of Section 506; or (h) any costs and expenses attributable to a Separately Financed Program.

**“Operating Reserve Account”** means the account by that name established by Section 502.

**“Operating Reserve Account Requirement”** or **“Minimum Operating Reserve Account Requirement”** means, during each Revenue Requirement Period, the greater of (i) the largest aggregate amount projected by the Department by which Operating Expenses exceed Power Charge Revenues during any consecutive seven (7) calendar months commencing in such Revenue Requirement Period, and (ii) either (A) 18% of the Department’s projected annual Operating Expenses for any Revenue Requirement Period in which the Department is procuring all or a portion of the Residual Net Short and which commences prior to 2006, or (B) 12% of the Department’s projected annual Operating Expenses for any Revenue Requirement Period in which the Department is not procuring all or a portion of the Residual Net Short or which commences after 2005; provided, however, that solely for purposes of (A) and (B) above for Revenue Requirement Periods commencing after 2003, the projected amount shall not be less than the applicable percentage of the Department’s Operating Expenses for the most recent

twelve (12) calendar month period for which the Department determines that reasonably full and complete Operating Expense information is available, adjusted as described in the next sentence. If the Department was financially responsible and liable under a Power Supply Contract during all or a portion of the applicable twelve (12) calendar month period, but financial responsibility has been assumed by another Person and the Department has been entirely relieved of financial liability and all other liabilities under the contract, or the contract has terminated or will terminate by its terms prior to the end of the Revenue Requirement Period for which the Operating Reserve Account Requirement is being calculated, then the relevant costs associated with that contract shall be excluded from the calculation of the historical Operating Expenses. If amended Revenue Requirements are filed with the Commission during any Revenue Requirement Period, the Operating Reserve Account Requirement shall be recalculated for the remainder of such Revenue Requirement Period as provided above. Notwithstanding the foregoing, in connection with the determination of whether additional Bonds may be issued upon compliance with paragraph (h) of subsection 2 of Section 202, the relevant calculation under clause (i) above shall be made in respect of a consecutive seven (7) calendar month period in the test period specified by such paragraph (h). All projections referenced in this paragraph shall be based on such assumptions as the Department deems to be appropriate after consultation with the Commission and, in the case of clause (i) above, may take into account a range of possible future outcomes. The Operating Reserve Account Requirement shall include, but shall not be limited to, the Priority Contract Contingency Reserve Amount.

**“Option Bonds”** means Bonds which by their terms may be tendered by and at the option of the Owner thereof to the Department or to the issuer of an Enhancement Facility providing liquidity with respect to such Bonds, for purchase prior to the stated maturity thereof, or the maturities of which may be extended by and at the option of the Owner thereof.

**“Outstanding,”** when used with reference to Bonds or Bonds of a Series, means, as of any date, Bonds or Bonds of such Series theretofore or thereupon being delivered under the Indenture except:

- (i) Any Bonds canceled at or prior to such date;
- (ii) Bonds the principal and Redemption Price, if any, of and interest on which have been paid in accordance with the terms thereof;
- (iii) Bonds in lieu of or in substitution for which other Bonds shall have been delivered pursuant to Article III, Section 406 or Section 906;
- (iv) Bonds deemed to have been paid as provided in subsection 2 of Section 1101;
- (v) Option Bonds tendered or deemed tendered in accordance with the provisions of the Supplemental Indenture authorizing such Bonds on the applicable tender date, if the purchase price thereof and interest thereon shall have been paid or amounts are available and set aside for such payment as provided in such Supplemental Indenture, except to the extent such tendered Option Bonds are held by the Department or

an issuer of an Enhancement Facility and/or thereafter may be resold pursuant to the terms thereof and of such Supplemental Indenture; and

(vi) as may be provided with respect to such Bonds by the Supplemental Indenture authorizing such Bonds;

and, for purposes of subsection 8 of Section 311, means any outstanding Interim Financing Notes.

**“Owner”** or any similar term means the registered owner of any Bond as shown on the books for the registration and transfer of Bonds maintained in accordance with Section 305 and, for the purposes set forth in subsection 8 of Section 311, the holder of any Interim Financing Note.

**“Parity Obligations”** means Reimbursement Obligations and amounts payable under Qualified Swaps. For purposes of Section 1003, any Parity Obligations entered into or issued subsequent to the date of delivery of this Indenture shall specify, to the extent applicable, the interest and principal components of, or the scheduled payments corresponding to interest under, such Parity Obligations. Parity Obligations shall comply with Section 1008.

**“Paying Agent”** means any paying agent for the Bonds of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Indenture.

**“Person”** means any individual, corporation, firm, partnership, joint venture, association, joint-stock company, trust, unincorporated association, limited liability company or partnership, or other legal entity or group of entities, including, but not limited to, a governmental entity or any agency or subdivision thereof.

**“Pooled Money Investment Rate”** means, for any amounts deposited in the Electric Power Fund from the General Fund and for any period, the rate of interest to be paid on such amounts to the State’s Pooled Money Investment Account as determined from time to time for such period.

**“Power”** means electric power and energy, including, but not limited to, capacity and output, or any of them.

**“Power Charge Revenues”** means Revenues received by the Department arising from Power Charges.

**“Power Charges”** has the same meaning as that term is defined in the 2002 Rate Agreement.

**“Power Supply Contract”** means any contract or agreement entered into by the Department pursuant to the Enabling Measures and under which the Department purchases Power, or purchases fuel for conversion to or in exchange for Power, or any option with respect thereto.

**“Principal Installment”** means, as of any date of calculation and with respect to any Series so long as any Bonds thereof are Outstanding, (i) the principal amount of Bonds (including the principal amount of any Option Bonds tendered for payment and not purchased) of such Series due (or so tendered for payment and not purchased) on any date for which no Sinking Fund Installments have been established, or (ii) the unsatisfied balance (determined as provided in subsection 3 of Section 506) of any Sinking Fund Installments due on any date for Bonds of such Series, plus the amount of the sinking fund redemption premiums, if any, which would be applicable upon redemption of such Bonds on such date in a principal amount equal to said unsatisfied balance of such Sinking Fund Installments, or (iii) if both clause (i) and clause (ii) apply on the same date with respect to different Bonds of such Series, the sum of such principal amount of Bonds and of such unsatisfied balance of Sinking Fund Installments due on such date plus such applicable redemption premiums, if any.

**“Priority Contract Contingency Reserve Amount”** means, during each Revenue Requirement Period or, for purposes of paragraph (h) of subsection 2 of Section 202, during the test period specified therein, the maximum amount projected by the Department to be payable by the Department under and pursuant to Priority Long Term Power Contracts in any calendar month during such Revenue Requirement Period. Each such projection shall be made at the beginning of the relevant Revenue Requirement Period. Such projections shall be based on such assumptions as the Department deems to be appropriate after consultation with the Commission and may take into account a range of possible future outcomes.

**“Priority Contract Account”** means the account by that name established by Section 502.

**“Priority Contract Costs”** means all costs and expenses payable by the Department under or pursuant to Priority Long Term Power Contracts.

**“Priority Long Term Power Contract”** has the same meaning as that term is defined in the 2002 Rate Agreement.

**“Purchase Price”** means, with respect to any Bond, 100% of the principal amount thereof plus accrued and unpaid interest, if any, plus, in the case of a Bond subject to mandatory tender for purchase on a date when such Bond is also subject to optional redemption at a premium, an amount equal to the premium that would be payable on such Bond if redeemed on such date.

**“Qualified Swap”** means, to the extent from time to time permitted by law, with respect to Bonds, (a) any financial arrangement (i) which is entered into by the Department with an entity that is a Qualified Swap Provider at the time the arrangement is entered into, (ii) which is a cap, floor or collar, forward rate, future rate, swap (such swap may be based on an amount equal either to the principal amount of such Bonds of the Department as may be designated or a notional principal amount relating to all or a portion of the principal amount of such Bonds), asset, index, price or market-linked transaction or agreement, other exchange or rate protection transaction agreement, other similar transaction (however designated), or any combination thereof, or any option with respect to any of the foregoing, executed by the Department, and (iii) which has been designated as a Qualified Swap with respect to such Bonds in a written

determination signed by an Authorized Officer and filed with the Trustee and the Co-Trustee, and (b) any letter of credit, line of credit, policy of insurance, surety bond, guarantee or similar instrument securing the obligations of the Department under any financial arrangement described in clause (a) above.

**“Qualified Swap Provider”** means an entity whose senior long term obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under an interest rate exchange agreement are guaranteed by an entity whose senior long term debt obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, are rated at the time of the execution of such Qualified Swap either (i) at least as high as the third highest Rating Category of each Rating Agency then maintaining a rating for the Qualified Swap Provider, but in no event lower than any Rating Category designated by any such Rating Agency for the Bonds subject to such Qualified Swap, or (ii) any such lower Rating Categories which each such Rating Agency indicates in writing to the Department and the Trustee will not, by itself, result in a reduction or withdrawal of its rating on the Outstanding Bonds subject to such Qualified Swap that is in effect prior to entering into such Qualified Swap.

**“Rate Agreement”** means any agreement between the Department and the Commission pursuant to the Act and other applicable provisions of law with respect to Revenue Requirements or charges in connection with Power sold by the Department and/or Electrical Corporations, as supplemented and amended from time to time.

**“Rating Agency”** means each nationally recognized securities rating agency then maintaining a rating on the Bonds at the request of the Department.

**“Rating Category”** means one of the generic rating categories of any Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

**“Redemption Price”** means, with respect to any Bond, 100% of the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof pursuant to the Indenture, or such other price as may be specified in a Supplemental Indenture.

**“Registrar”** means any registrar for the Bonds of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Indenture.

**“Reimbursement Obligation”** has the meaning provided in subsection 4 of Section 311.

**“Residual Net Short”** means the total electric requirements of the retail electric end-users served by and within the service areas of Electrical Corporations whose customers receive Power from the Department, minus electric generation available from both Utility Retained Generation and Department contract purchases. “Utility Retained Generation” means generating resources retained by Electrical Corporations, bilateral contracts held by Electrical Corporations and Qualifying Facility contracts. “Qualifying Facility” means a renewable power

production or co-generation facility not primarily engaged in the generation or sale of electric power and that qualifies under Section 201 of the federal Public Utilities Regulatory Policy Act of 1978, the output from which facility is sold to an Electrical Corporation.

**“Responsible Officer”** means (i) with respect to the Trustee, any officer or employee of the State having direct responsibility for the administration of the Indenture, and in each case also, with respect to a particular matter, any other officer or employee to whom such matter is referred because of such officer’s or employee’s knowledge of and familiarity with the particular subject, and (ii) with respect to the Co-Trustee, any officer assigned to the corporate trust office of the Co-Trustee, including, but not limited to, any managing director, principal, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Co-Trustee customarily performing functions similar to those performed by any of the above designated officers.

**“Revenue Requirement Period”** means any period for which the Department determines, and submits to the Commission pursuant to subsection 3 of Section 605, the Department’s Revenue Requirements. Revenue Requirement Period also includes the period commencing with the delivery of the initial Series of Bonds and ending December 31, 2002.

**“Revenue Requirements”** means the amounts needed from time to time by the Department to satisfy its obligations under the Enabling Measures.

**“Revenues”** means all revenues, receipts, charges, income, profits, proceeds or other moneys actually received by the Department, from whatever source, arising from or in connection with the conduct of the Department’s program for the purchase and sale of Power and related activities pursuant to the Enabling Measures and Senate Bill 7X, including, but not limited to, (i) all money paid directly or indirectly to or for the account of the Department with respect to any sale, exchange, transfer or disposition of Power acquired by the Department pursuant to the Enabling Measures and Senate Bill 7X, (ii) all moneys actually received by the Department which have been recovered as compensation or damages from providers of Power or other commodities or services acquired by the Department pursuant to the Enabling Measures, provided that nothing in the Indenture shall obligate the Department to recover and actually receive moneys as such compensation or damages from such providers, (iii) net payments to the Department under Qualified Swaps and (iv) Direct Access Power Charges. Revenues shall include, but shall not be limited to, Bond Charge Revenues, Power Charge Revenues, and Direct Access Power Charge Revenues, as and when received by the Department. Revenues shall not include (a) any revenues, receipts, charges, income, profits, proceeds or other money or monetary benefits attributable directly or indirectly to the ownership or operation of any Separately Financed Program, (b) any federal or state grant moneys to the extent receipt is conditioned upon their expenditure for a particular purpose or in a particular manner other than as provided in the Indenture for Revenues, (c) moneys actually received as compensation or damages recovered from providers of Power or other commodities or services acquired by the Department pursuant to the Enabling Measures if and to the extent the Department’s entitlement thereto is not final and is subject to appeal, other review or refund, (d) the proceeds of any Bonds or Subordinated Indebtedness, (e) any amounts received as a result of a deposit of moneys or Defeasance Securities for the defeasance of Bonds pursuant to Section 1101, except to the extent not required for such purpose as provided in Section 1101, and (f) the proceeds of any draw on

or payment under any Enhancement Facility which is intended for the payment of particular Bonds.

**“Securities Depository”** means, with respect to Bonds of a Series, the securities depository, if any, appointed for such Bonds in a Supplemental Indenture providing with respect to the issuance and payment of such Bonds.

**“Senate Bill 7X”** means Chapter 3 of the Statutes of 2001 (Senate Bill 7 of the First Extraordinary Session) of the State.

**“Separately Financed Program”** means, collectively, (i) any program, project or purpose described as such in Section 203 and (ii) the State Water Resources Development System.

**“Series”** means, subject to subsection 8 of Section 311, all of the Bonds delivered on original issuance pursuant to a single Supplemental Indenture and denominated therein a single series, and any Bonds thereafter delivered in lieu of or in substitution therefor pursuant to Article III, Section 406 or Section 906, regardless of variations in maturity, interest rate, or other provisions.

**“Servicing Agreement”** means any agreement, as supplemented and amended, between the Department and one or more Electrical Corporations, or, if approved by the Commission, other Persons if a Consultant advises the Trustee or Co-Trustee in writing that such other Person is reasonably expected to be capable of carrying out the provisions thereof, to provide the functions or services specified in subsection 1 of Section 607 as agent of the Department.

**“Servicing Arrangements”** means, collectively, the Servicing Agreements and Servicing Orders, or any of them, as appropriate.

**“Servicing Order”** means each order of the Commission described in subsection 1 of Section 607.

**“Sinking Fund Installment”** means an amount so designated for the retirement prior to maturity of Bonds of a Series of like maturity and interest rate.

**“State”** means the State of California.

**“State Water Resources Development System”** means the system and activities authorized by the provisions of Part 3 (commencing with Section 11000) of Division 6 of the State Water Code.

**“Subordinated Indebtedness”** means any bond, note or other indebtedness authorized by a resolution or indenture of the Department and permitted under the Act and designated as constituting “Subordinated Indebtedness” in a certificate of an Authorized Officer delivered to the Trustee, which shall be payable from the Trust Estate subject and subordinate to the prior payments to be made therefrom as provided for in the Indenture, including, but not limited to, Sections 503 and 604. Subordinated Indebtedness may be secured by a lien on and

pledge of the Trust Estate junior and inferior to the lien on and pledge of the Trust Estate herein created for the payment of the Bonds and Parity Obligations to the extent permitted by the Indenture, and may also be payable from such other sources and additionally secured as provided by the Indenture.

**“Subordinated Obligation”** means any payment obligation (other than a payment obligation constituting a Parity Obligation or Subordinated Indebtedness) of the Department incurred pursuant to the Act arising under any contract, agreement or other obligation incurred pursuant to the Act not constituting Bonds, Parity Obligations, Operating Expenses, Interim Financing Notes or the Credit and Security Agreement, provided that if such contract, agreement or other obligation is not incurred in connection with the Bonds, it shall have been approved by the Commission. Each Subordinated Obligation shall be payable from the Trust Estate subject and subordinate to the prior payments to be made therefrom as provided for in the Indenture, including, but not limited to, Sections 503 and 604. Subordinated Obligations may be secured by a lien on and pledge of the Trust Estate junior and inferior to the lien on and pledge of the Trust Estate herein created for the payment of the Bonds and Parity Obligations to the extent permitted by the Indenture, and may also be payable from such other sources and additionally secured as provided by the Indenture.

**“Supplemental Indenture”** means any Indenture supplemental to or amendatory of the Indenture, adopted by, or adopted pursuant to authorization granted by, the Department in accordance with Article VIII thereof.

**“Taxable Bonds”** means Bonds which are not Tax-Exempt Bonds.

**“Tax-Exempt Bonds”** means Bonds the interest on which is intended by the Department to be generally excluded from gross income for federal income tax purposes.

**“Treasurer”** means the Treasurer of the State, or any successor to the rights, duties and obligations of the Treasurer under the Indenture.

**“Trustee”** means the Treasurer.

**“Trust Estate”** means, collectively:

- (i) all Revenues;
- (ii) all right, title and interest of the Department in and to Revenues, and all rights to receive the same, including but not limited to the assignment provided by subsection 6 of Section 607;
- (iii) the Operating Account, the Operating Reserve Account, the Bond Charge Collection Account, the Bond Charge Payment Account and the Debt Service Reserve Account, subject to the application thereof as provided in the Indenture; and
- (iv) all funds, moneys and securities and any and all other rights and interests in property, whether tangible or intangible, from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for



additional security hereunder for the Bonds and Parity Obligations by the Department, or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times, and to hold and apply the same subject to the terms hereof; provided, however, that no such additional security shall be received, held or applied by the Trustee unless accompanied by a Counsel's Opinion to the effect that such additional security may be pledged under the Act and that it would not cause the Bonds or Parity Obligations to constitute a debt or liability of the State within the meaning of any constitutional or statutory provision or restriction, unless such constitutional or statutory provision or restriction shall have been complied with;

provided, however, that the Trust Estate shall not include, as to any Bond, any moneys or securities set aside under the Indenture specifically for the payment of other Bonds pursuant to Sections 406, 1101 and 1103 or otherwise and, as to any Option Bond, any moneys or securities set aside for the purchase thereof as may be provided in the Indenture.

**"2001 Emergency Measures"** means all Proclamations and Orders of the Governor of the State issued in calendar year 2001 pursuant to the California Emergency Services Act (Chapter 7, Division 1, Title 2 of the California Government Code, as amended) as amended, including, but not limited to, any regulations issued pursuant thereto, issued in response to or in anticipation of the need to assure the availability of power to retail end-use customers in the State due to the inability or failure of an Electrical Corporation to purchase such power.

**"2002 Rate Agreement"** means the Rate Agreement, dated as of March 8, 2002, between the Department and the Commission, as supplemented and amended from time to time.

**"Valuation Date"** means, with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Indenture authorizing such Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds.

**"Variable Rate Bonds"** means, as of any date of determination, any Bonds on which the interest rate borne thereby may vary thereafter.

## **102. Rules of Construction.**

(a) The singular form of any word used herein, including, but not limited to, the terms defined in Section 101, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to "Articles," "Sections" and other subsections hereof are to the corresponding Articles, Sections or subsections of this Indenture as may be amended from time to time; and the words "herein," "hereof," "hereunder" and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or subsection hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for

convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of the Indenture or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) All references herein to agreements or contracts shall be deemed to include any amendments to such agreements or contracts that are approved in accordance with the terms thereof.

(f) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(g) The term “including” means “including but not limited to”.

(h) Wherever this Indenture requires the Department to consult with the Commission with respect to assumptions made by the Department, the Department shall involve the Commission in the development of these assumptions by conferring regularly in a manner consistent with the Department’s obligations under Article 4 of the 2002 Rate Agreement.

**103. Authority for the Indenture.** The Indenture is adopted pursuant to the provisions of the Act.

**104. Indenture to Constitute Contract.** In consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued under the Indenture by those who shall own or enter into the same from time to time, the Indenture shall be deemed to be and shall constitute a contract between the Department and the Owners from time to time of the Bonds; and the pledge made in the Indenture and the covenants and agreements therein set forth to be performed by or on behalf of the Department shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof except as expressly provided in or permitted by the Indenture.

[End of Article I]

## ARTICLE II

### AUTHORIZATION AND ISSUANCE OF OBLIGATIONS

**201. Authorization of Bonds.** 1. The Indenture hereby authorizes Bonds of the Department to be designated as “Power Supply Revenue Bonds,” “Power Supply Revenue Notes,” or such other designation as determined by the Department in the Supplemental Indenture authorizing such Bonds. The Bonds, if and when authorized by the Department pursuant to one or more Supplemental Indentures, may be issued in one or more Series, and the designation thereof shall include such further or different appropriate particular designations added to or incorporated in such title for the Bonds of any particular Series, as the Department may determine. Bonds may be issued as Tax-Exempt Bonds, as Taxable Bonds, as obligations which convert on a particular date or dates from Taxable Bonds to Tax-Exempt Bonds, or as Taxable Bonds which are mandatorily exchangeable on a particular date or dates for Tax-Exempt Bonds, or otherwise as determined by Supplemental Indenture and not contrary to the Indenture as then in effect. The aggregate principal amount of the Bonds that may be executed and delivered under the Indenture is not limited except as provided in the Indenture or as may be limited by law.

2. Bonds may be issued for any purpose of the Department authorized by the Act, including, but not limited to, the payment of Costs.

**202. General Provisions for Issuance of Bonds.** 1. Bonds may be issued pursuant to the Indenture in such principal amount or amounts for each Series as may be specified in the applicable Supplemental Indenture. Bonds shall be authorized by a Supplemental Indenture which shall specify or otherwise provide with respect to the following:

- (a) the purpose or purposes for which such Bonds are being issued;
- (b) the authorized principal amount and designation (including, but not limited to, Series designation) of such Bonds;
- (c) the date or dates, and the maturity date or dates, and principal amount of each maturity of such Bonds;
- (d) whether the Bonds bear interest, and if so, the interest rate or rates of the Bonds, or the manner of determining such rate or rates, the interest payment dates therefor and the date or dates from which such Bonds shall bear interest;
- (e) the maximum rate of interest that may be borne by Variable Rate Bonds;
- (f) whether such Bonds will be serial Bonds or term Bonds and, for term Bonds, the amount to be retired from sinking fund installments and the dates and amounts thereof;
- (g) the denominations of, and the manner of numbering and lettering, the Bonds;

(h) the Paying Agent or Paying Agents and the place or places of payment of the principal and Redemption Price, if any, of, and interest on, such Bonds;

(i) the Redemption Price or Prices, if any, and, subject to Article IV, the redemption terms, if any, for such Bonds;

(j) the forms of such Bonds and, if Bonds are Option Bonds, provisions regarding tender for purchase or redemption thereof and payment of the Purchase or Redemption Price thereof;

(k) the application of the proceeds of such Bonds, including, but not limited to, deposits to the Bond Charge Payment Account pursuant to subsection 6 of Section 506, to the Debt Service Reserve Account pursuant to subsection 1 of Section 507 and to the Operating Reserve Account pursuant to subsection 1 of Section 508; and

(l) any other matters necessary, advisable or convenient in connection therewith and not materially in conflict with the Indenture as then in effect.

2. Bonds may be sold in one or more Series (each of which shall contain a designation distinguishing it from other Series), and shall be delivered by the Department under the Indenture but only upon receipt by the Trustee of each of the following:

(a) A Counsel's Opinion substantially to the effect that (a) the Department is authorized under the Act, as amended to the date of such Opinion, and other applicable law to execute and deliver the Indenture and to perform its obligations thereunder, and the Indenture has been duly authorized, executed and delivered by the Department and constitutes a valid and binding agreement of the Department, enforceable against the Department in accordance with its terms; (b) the Indenture creates the valid pledge which it purports to create of the Trust Estate in the manner and to the extent provided in Section 501; and (c) such Bonds have been duly and validly authorized and issued in accordance with the laws of the State, including the Act and the Indenture, and such Bonds constitute valid and binding limited special obligations of the Department payable solely from the Trust Estate, including the Revenues, as provided in the Indenture.

(b) A fully executed copy of the Supplemental Indenture authorizing such Bonds.

(c) A written order of the Department as to the delivery of such Bonds, signed by an Authorized Officer.

(d) Such further documents and moneys as are required by the provisions of Article V or Article VIII.

(e) A copy of a Rate Agreement applicable to such Bonds, or a certificate of an Authorized Officer to the effect that such a Rate Agreement theretofore has been delivered to the Trustee.

(f) A certificate of an authorized representative of the Commission as to the maximum aggregate principal amount of Bonds and Subordinated Indebtedness approved by or pursuant to Rate Agreements for issuance by the Department pursuant to the Act, and a certificate of an Authorized Officer as to the aggregate principal amount of Bonds and Subordinated Indebtedness theretofore or then being issued by the Department, in each case taking into account such exclusions as may be permitted by such Rate Agreements and the Act.

(g) A certificate of an Authorized Officer to the effect that, upon the delivery of such Bonds, no Event of Default, or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, shall have occurred and be continuing.

(h) A certificate or report of a Consultant setting forth (i) the estimated Revenues for the twenty-four (24) calendar month period commencing on the first day of the calendar month next succeeding the date of delivery of such Bonds (the “**test period**”), (ii) the estimated Debt Service, and estimated amounts payable under all Parity Obligations, during the test period, (iii) the projected Debt Service on Bonds, and projected amounts payable under Parity Obligations, projected to be issued or entered into for any purpose during the test period, (iv) the sum of the estimated and projected amounts required to be paid for Operating Expenses, Subordinated Indebtedness and Subordinated Obligations during the test period, (v) the sum of the amounts estimated and projected to be available in the Operating Account, Bond Charge Collection Account and Bond Charge Payment Account for the payment of the items of cost referred to in clauses (ii) through (iv) above at the commencement of the test period, and (vi) the balances on deposit in the Debt Service Reserve Account and Operating Reserve Account at the commencement of, and projected to be on deposit therein throughout, the test period, and showing that (1) for the test period, the sum of the amounts set forth in clauses (i) and (v) above is at least equal to 100% of the sum of the amounts set forth in clauses (ii), (iii) and (iv) above, (2) the Debt Service Reserve Account is maintained throughout the test period at an amount at least equal to the Debt Service Reserve Requirement and (3) the Operating Reserve Account is maintained throughout the test period at an amount at least equal to the Operating Reserve Account Requirement. Such certificate or report shall reflect, among other things, the issuance of such Bonds and the Debt Service estimated to be payable thereon. The Consultant may base its estimates and projections upon such factors as it shall consider reasonable, including, but not limited to, future increases in Revenue Requirements, a statement to which effect shall be included in such certificate or report. For purposes of this requirement, any Debt Service, Parity Obligations, Subordinated Indebtedness and payments shall not include any amounts thereof expected by the Department to be paid from any funds, other

than Revenues, reasonably expected by the Department to be available therefor (including, without limitation, the anticipated receipt of proceeds of sale of Bonds or Subordinated Indebtedness, or moneys not a part of the Trust Estate), which expectations, if included in a written determination signed by an Authorized Officer and filed with the Trustee, shall be conclusive. This paragraph shall not apply to (w) the initial Series of Bonds, (x) any Bonds assumed to be issued as part of the plan of finance of the Department's program for the purchase and sale of Power, as described in the public offering statement issued by the Department in connection with the initial Series of Bonds, (y) any Bonds issued to refund any other Bonds, and (z) any Bonds issued to refund bonds, notes or other evidences of indebtedness issued in anticipation of the issuance of such Bonds, if the requirements of this paragraph shall have been satisfied upon issuance of such bonds, notes or other evidences of indebtedness, assuming for such purpose that they are Bonds with principal due based upon level amortization of principal and interest over a period commencing on the date of issue and ending on the latest maturity date of any Bonds, and bearing interest as described for Bonds in the definition of Debt Service in Section 101.

(i) A copy of any approvals required by Section 80132 of the Act.

3. If Bonds are to be listed on a domestic or foreign stock exchange, Authorized Officers shall have the authority to take all such actions as they deem necessary or appropriate to comply with the listing requirements of such exchange, including, but not limited to, the appointment of a member of such exchange as listing agent, the publication where required by such exchange of all redemption notices, the appointment of a special clearing agent and paying agent, and the execution of an undertaking letter with such exchange.

**203. Separately Financed Program.** Nothing in the Indenture shall prevent the Department from authorizing and issuing bonds, notes, or other obligations or evidences of indebtedness, other than Bonds, Parity Obligations, Subordinated Indebtedness or Subordinated Obligations, for any program, project or purpose authorized by the Enabling Measures or by other then applicable State statutory provisions, or from financing any such program, project or purpose from other available funds (such program, project or purpose being referred to herein as a "**Separately Financed Program**"), if the debt service on such bonds, notes, or other obligations or evidences of indebtedness, if any, and the Department's share of any operating expenses related to such Separately Financed Program, are not payable from the Trust Estate.

[End of Article II]

## ARTICLE III

### GENERAL TERMS AND PROVISIONS OF OBLIGATIONS

**301. Medium of Payment; Form and Date.** 1. Except as otherwise provided in a Supplemental Indenture authorizing particular Bonds, the Bonds shall be payable, with respect to interest, principal, Purchase Price and Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

2. Except as may otherwise be provided in a Supplemental Indenture authorizing particular Bonds, Bonds shall be issued in the form of fully registered Bonds without coupons. Bonds, the certificate of authentication, if any, and the form of assignment shall be in substantially the form specified in the Supplemental Indenture authorizing such Bonds with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or thereby or are required by law, and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officers executing such Bonds, as evidenced by their execution of the Bonds. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of such Bond, or as multiple pages (with or without such a reference). Bonds may be typewritten, printed, engraved, lithographed or otherwise produced.

3. Bonds shall be dated, and shall bear or not bear interest, as provided in the Supplemental Indenture authorizing such Bonds.

**302. Legends.** Bonds may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of the Indenture as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the Department.

**303. Execution and Authentication.** 1. The Bonds shall be executed in the name of the Department by the manual or facsimile signature of an Authorized Officer and attested by the manual or facsimile signature of another Authorized Officer, or in such other manner as may be required by law or specified in a Supplemental Indenture. In case any one or more of the officers who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been actually delivered, such Bonds may, nevertheless, be delivered as herein provided, and may be issued as if the Persons who signed such Bonds had not ceased to hold such offices. Any Bond may be signed on behalf of the Department by such Persons as at the actual time of the execution of such Bond shall be duly authorized or hold the proper office in the Department, although at the date of the Bonds such Persons may not have been so authorized or have held such office.

2. Except as may be otherwise provided in a Supplemental Indenture, Bonds of each Series shall bear thereon a certificate of authentication, in the form set forth in the Supplemental Indenture authorizing such Bonds, executed manually by the Registrar. Except as may otherwise be provided in a Supplemental Indenture, only such Bonds as shall bear thereon

such certificate of authentication shall be entitled to any right or benefit under the Indenture and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Registrar. Such certificate of the Registrar upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under the Indenture and that the Owner thereof is entitled to the benefits of the Indenture.

**304. Interchangeability of Bonds.** Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or such Owner's duly authorized attorney, may, at the option of such Owner, be exchanged for an equal aggregate principal amount of Bonds of the same Series, maturity and interest rate of any other authorized denomination.

**305. Negotiability, Transfer and Registry.** All the Bonds issued under the Indenture shall be negotiable, subject to the provisions for registration and transfer contained in the Indenture and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Department shall maintain and keep, at the office of the Registrar, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at said office, the Department shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it or the Registrar may prescribe, any Bond entitled to registration or transfer. So long as any of the Bonds remain Outstanding, the Department shall make all necessary provision to permit the exchange of Bonds at the office of the Registrar.

**306. Transfer of Bonds; Persons Deemed Owners.** 1. Except as may be otherwise provided in a Supplemental Indenture authorizing Bonds in book-entry-only form, each Bond shall be transferable only upon the books of the Department, which shall be kept for that purpose at the office of the Registrar, by the Owner thereof in person or by such Owner's attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or such Owner's duly authorized attorney. Upon the transfer of any such Bond, the Department shall issue in the name of the transferee a new Bond or Bonds of the same aggregate principal amount, Series, maturity date and interest rate as the surrendered Bond.

2. Except as may be otherwise provided in a Supplemental Indenture authorizing Bonds in book-entry-only form, the Department and each Fiduciary may deem and treat the Person in whose name any Outstanding Bond shall be registered upon the books of the Department as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, Purchase Price and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon such Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Department nor any Fiduciary shall be affected by any notice to the contrary. The Department agrees, to the extent permitted by law, to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, acting in good faith and without negligence under the Indenture, in so treating such registered owner.



**307. Regulations With Respect to Exchanges and Transfers.** In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Department shall execute and the Registrar shall deliver Bonds in accordance with the provisions of the Indenture. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. For every such exchange or transfer of Bonds, whether temporary or definitive, the Department or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Department shall not be obliged to make any such exchange or transfer of Bonds during the 20 days (or such lesser period as may be prescribed by any Supplemental Indenture) next preceding an interest payment date on such Bonds or, in the case of any proposed redemption of such Bonds, next preceding the mailing of notice of such redemption.

**308. Bonds Mutilated, Destroyed, Stolen or Lost.** In case any Bond shall become mutilated or be destroyed, stolen or lost, the Department shall execute, and thereupon the Registrar shall authenticate and deliver, a new Bond of like Series, maturity, interest rate and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Department and the Registrar that such Bond has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Department and the Registrar with indemnity satisfactory to them and complying with such other reasonable regulations as the Department and the Registrar may prescribe and paying such expenses as the Department and Registrar may incur. All Bonds so surrendered to the Registrar shall be canceled by it. If any such Bond shall have matured, or if such Bond shall have been called for redemption or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Department may cause the same to be paid, when payment is due on such Bond, without surrender thereof upon indemnity satisfactory to the Department and the Registrar. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Department, whether or not the Bonds so alleged to be destroyed, stolen or lost are at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits, with all other Bonds issued under the Indenture, in any moneys or securities held by the Department or the Fiduciary for the benefit of the Owners of Bonds.

**309. Cancellation and Disposition of Bonds.** All Bonds that have been paid (whether at maturity or by call for redemption, purchase by the Department, or otherwise) or delivered to the Registrar for cancellation shall be canceled and not reissued, except as otherwise provided in a Supplemental Indenture with respect to Option Bonds. Unless otherwise directed by the Department, the Trustee shall treat canceled Bonds in accordance with its document retention policies.

**310. Book-Entry-Only System.** Notwithstanding any other provision of the Indenture, the Department may employ a book-entry-only system of registration with respect to any Bonds, and the procedures regarding such registration shall be set forth in a Supplemental Indenture. Any provisions of the Indenture inconsistent with book-entry-only Bonds shall not be applicable to such book-entry-only Bonds.

**311. Enhancement Facilities; Qualified Swaps and Other Similar Arrangements; Parity Obligations; Interim Financing Notes.** 1. The Department may include the following provisions in a Supplemental Indenture authorizing the issuance of a Series of Bonds as the Department deems appropriate, and no such provision shall be deemed to constitute an amendment to the Indenture requiring action under Section 801, 802 or 803, including, but not limited to:

(a) So long as an Enhancement Facility relating to any Series of Bonds is in full force and effect, and the issuer of the Enhancement Facility is not in default thereunder, then, in all such events, the Supplemental Indenture for such Series of Bonds may specify that either (i) the issuer of such Enhancement Facility shall be deemed to be the sole Owner of the Outstanding Bonds the payment of which such Enhancement Facility secures or secured when the approval, consent or action of the Owners of such Bonds is required or may be exercised under the Indenture, or (ii) the approval, consent or action of the issuer of such Enhancement Facility shall be required in addition to the approval, consent or action of the applicable percentage of the Owners of the Outstanding Bonds the payment of which such Enhancement Facility secures or secured when the approval, consent or action of the Owners of such Bonds is required or may be exercised under the Indenture.

(b) In the event that the principal, Sinking Fund Installments, if any, Purchase Price and Redemption Price, if applicable, or interest due on any Outstanding Bonds shall be paid under the provisions of an Enhancement Facility, all covenants, agreements and other obligations of the Department to the Owners of such Bonds shall continue to exist, and the issuer of the Enhancement Facility shall be subrogated to the rights of such Owners in accordance with the terms of such Enhancement Facility.

2. In addition, such Supplemental Indenture may establish such provisions as are necessary (i) to comply with the provisions of any Enhancement Facility that are not inconsistent with the Indenture, (ii) to provide relevant information and notices to the issuer of the Enhancement Facility, and (iii) to provide a mechanism for paying principal and Sinking Fund Installments of and interest on Bonds secured by, or purchased pursuant to, the Enhancement Facility.

3. The Department may enter into agreements with the issuer of any Enhancement Facility providing for, among other things: (i) the payment of fees, costs, expenses and, to the extent permitted by law, indemnities to such issuer, its parent and its assignees and participants in connection with such Enhancement Facility, (ii) the terms and conditions of such Enhancement Facility and the Bonds to which the Enhancement Facility relates, and (iii) the security, if any, to be provided for the issuance of such Enhancement Facility. Any such agreement may provide for the purchase of Bonds to which the Enhancement Facility relates by the issuer of such Enhancement Facility, with such adjustments to the rate of interest, method of determining interest, maturity (which shall not be inconsistent with the requirements of subsection 4 of this Section 311), or redemption provisions, as shall be specified by the Supplemental Indenture authorizing the issuance of such Bonds.

4. The Department may, in an agreement with the issuer of any Enhancement Facility, agree to directly reimburse such issuer (or its assignees and participants, or any agent for the issuer or its assignees) for amounts paid by the issuer of the Enhancement Facility for the payment of the principal of, interest on, and Redemption Price or Purchase Price of Bonds under the terms of such Enhancement Facility (together with interest thereon, if any, and the amounts and obligations described in the next following two paragraphs, a “**Reimbursement Obligation**”), whether evidenced by an obligation to reimburse such issuer that is separate from the Department’s obligations on Bonds (a “**Credit Facility Reimbursement Obligation**”) or by modified debt service obligations on Bonds acquired by such issuer (a “**Liquidity Facility Reimbursement Obligation**”); provided, however, that no such obligation to reimburse or modified debt service obligation shall require payments, other than from remarketing proceeds, to be made faster than on a level debt service (principal and interest) basis (calculated in three (3) month intervals) over a period ending no sooner than three (3) years following the date on which such reimbursement obligation is incurred, (or, if less, extending to the final maturity date of the related Bonds) with the first installment commencing no earlier than six (6) months after the date from which the Liquidity Facility Reimbursement Obligation is incurred; and provided further, however, that the immediately preceding proviso shall not apply to any amounts payable to any issuer of any policy of bond insurance that is a subrogee of an Owner of Bonds with respect to amounts payable by the Department under such Bonds, or to any Alternate Debt Service Reserve Account Deposit. Notwithstanding anything to the contrary contained in this paragraph, no Reimbursement Obligation shall be created, for purposes of the Indenture, until amounts are paid under the related Enhancement Facility.

Any Credit Facility Reimbursement Obligation may include interest calculated at a rate higher than the interest rate on the related Bond. The following obligations also shall constitute Credit Facility Reimbursement Obligations: (i) payments of any fees, costs, expenses, indemnification, or other obligations to any such provider, its parent and its assignees and participants or any agent therefor, and (ii) payments pursuant to any advance, term-loan or other principal amortization requirements in reimbursement of any such advance or term-loan, provided that the total amount to be paid (including interest thereon) either (a) shall not be required to be paid faster than on a level debt service (principal and interest) basis (calculated in three (3) month intervals) over a period ending no sooner than three (3) years following the date on which such reimbursement obligation is incurred, with the first installment commencing no earlier than six (6) months after the date from which the Reimbursement Obligation is incurred, or (b) shall be paid from remarketing proceeds.

Any Liquidity Facility Reimbursement Obligation evidenced by Bonds of a Series may include interest calculated at a rate higher than the interest rate on other Bonds of such Series. The following obligations also shall constitute Liquidity Facility Reimbursement Obligations: (i) payments of any fees, costs, expenses, indemnification, or other obligations to any such provider, its parent and its assignees and participants or any agent therefor, and (ii) payments of differential and/or excess interest amounts.

5. Any such Enhancement Facility shall be for the benefit of or secure only such Bonds or portion thereof as shall be specified in the applicable Supplemental Indenture.

6. In connection with the issuance of any Bonds or at any time thereafter so long as Bonds remain Outstanding, the Department may, to the extent from time to time permitted pursuant to law, enter into Qualified Swaps. The total amount of the termination payment under a Qualified Swap shall not be required to be paid by the Department faster than on a level amortization basis (calculated in three (3) month intervals) over a period ending no sooner than three (3) years following the date of termination, with the first installment commencing no earlier than six (6) months after the date of termination (in which case the termination payment also may include interest); provided, however, that if the Department elects to terminate any Qualified Swap at its option, any termination payments shall be made as provided in such Qualified Swap.

7. For purposes of this Section 311, to the extent provided in a Supplemental Indenture, the term “issuer” of an Enhancement Facility for Bonds of a Series may include, in addition to the actual issuer or issuers thereof and any lender that is a party to, or is a participant in rights created under, such Enhancement Facility.

8. For purposes of Section 603, and Articles VII, VIII, IX, X and XI of this Indenture (except paragraphs (5) and (13) of Section 801 and paragraphs (1), (2) and (6) of Section 1001) and otherwise unless the context otherwise requires, references to “Bond” shall also include each Interim Financing Note, references to “Series” or “Series of Bonds” shall also include as a Series all outstanding Interim Financing Notes, and references to “Owner” shall also include the holder of any Interim Financing Note.

9. Any reimbursement obligation, modified debt service provision, interest rate exchange or rate protection agreement, or other arrangements and costs, of the types (but not necessarily satisfying all requirements) described in this Section 311 but applicable to Subordinated Indebtedness shall constitute Subordinated Obligations.

[End of Article III]

## ARTICLE IV

### REDEMPTION OF BONDS

**401. Right of Redemption and Redemption Price.** Bonds subject to redemption prior to maturity pursuant to a Supplemental Indenture shall be redeemable, upon written notice as provided in this Article IV, at such times, at such Redemption Prices and upon such terms (in addition to and consistent with the terms contained in this Article IV) as may be specified in the Supplemental Indenture authorizing such Bonds.

**402. Redemption at Election of Department.** In the case of any redemption of Bonds at the election of the Department, the Department shall give written notice to the Trustee, Co-Trustee and Registrar of (i) its election so to redeem, (ii) the redemption date, (iii) the Series, and (iv) the principal amounts of the Bonds of each maturity and interest rate of such Series to be redeemed (which Series, maturities, interest rates and principal amounts thereof to be redeemed shall be determined by the Department in its sole discretion, subject to any limitations with respect thereto contained in any Supplemental Indenture). Unless otherwise required by any Supplemental Indenture, the Department may elect to redeem Bonds in any order of maturity and shall not be required to redeem all Bonds of any maturity. Such notice shall be given at least thirty (30) days prior to the redemption date or such shorter or longer period as may be provided in the Supplemental Indenture or as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as in Section 405 provided, and unless notice of redemption is rescinded pursuant to Section 405, the Department shall on or prior to the redemption date cause to be paid out to the appropriate Paying Agent or Paying Agents out of moneys available therefor an amount in cash which, in addition to other moneys, if any, available therefor held by such Paying Agent or Paying Agents, will be sufficient to redeem, on the redemption date at the Redemption Price thereof, all of the Bonds to be redeemed.

**403. Redemption Otherwise Than at Department's Election.** Whenever by the terms of the Indenture Bonds are required to be redeemed otherwise than at the election of the Department, the Registrar shall select the Bonds to be redeemed and give the notice of redemption, and the Trustee shall pay out of moneys available therefor the Redemption Price to the appropriate Paying Agents, in accordance with the terms of this Article IV.

**404. Selection of Bonds to be Redeemed.** In the event of redemption of less than all the Outstanding Bonds of like Series, maturity and interest rate, the Registrar shall select, in such manner in its discretion as it shall deem appropriate and fair, the numbers of the Bonds to be redeemed and portions of any thereof to be redeemed in part, unless otherwise required by any Supplemental Indenture. Bonds of denominations equal or less than the minimum authorized denomination thereof may be redeemed only as a whole. Bonds of denominations of more than the minimum authorized denomination thereof may be redeemed either as a whole or in part (which part must be an authorized denomination). For the purposes of this Section 404, Bonds or portions thereof which have theretofore been selected for redemption shall not be deemed Outstanding.

**405. Notice of Redemption.** When the Trustee, Co-Trustee and Registrar shall receive notice from the Department of its election to redeem Bonds pursuant to Section 402, and

when redemption of Bonds is required by the Indenture pursuant to Section 403, the Registrar shall give notice, in the name of the Department, of the redemption of such Bonds, which notice shall specify the Series, maturities and, if any maturity shall include Bonds bearing different interest rates and all Bonds of such maturity are not being redeemed, interest rate of the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Bonds of any like Series, maturity and interest rate are to be redeemed, the letters and numbers or other distinguishing marks of such Bonds so to be redeemed, and, in the case of Bonds to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed, and, if applicable, that such notice is conditional and the conditions that must be satisfied. Such notice shall further state that on the applicable redemption date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable, unless, in the case of any conditional notice, such conditions are not satisfied or such notice is rescinded, and except as provided by Section 406. Such notice shall be given by first class mail, postage prepaid, not less than thirty (30) days nor more than 60 days, or by any earlier or later date as may be specified in a Supplemental Indenture authorizing a particular Series, before the redemption date, to the Owners of any Bonds or portions of Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registry books. Failure so to mail any such notice to any particular Owner shall not affect the validity of the proceedings for the redemption of Bonds not owned by such Owner and failure of any Owner to receive such notice shall not affect the validity of the proposed redemption of Bonds.

Moneys sufficient to pay the Redemption Price of Bonds called for optional or mandatory redemption shall not be required to be on deposit with the Trustee or any Paying Agent on or prior to the date notice of such redemption is given pursuant to this Section, except as otherwise may be provided by Supplemental Indenture. Any notice of optional redemption given pursuant to this Section may be made conditional upon receipt by the Paying Agents of moneys sufficient to pay the Redemption Price of such Bonds or upon the satisfaction of any other condition, or may be rescinded upon the occurrence of any other event, which notice shall specify any such conditions or events. Any conditional notice so given may be rescinded at any time before payment of such Redemption Price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Registrar to affected Owners of Bonds, in the same manner as the conditional notice of redemption was given, as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Notice of redemption of any Series of Bonds shall also be sent by the Registrar to such additional Persons as may be specified in the Supplemental Indenture authorizing such Series.

**406. Payment of Redeemed Bonds; Purchase of Redeemed Bonds.** Notice having been given in the manner provided in Section 405, the Bonds or portions thereof so called for redemption shall, subject to the second paragraph of Section 405, become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to

the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date. If there shall be called for redemption less than all of a Bond, the Department shall execute and cause to be delivered, upon the surrender of such Bond, without charge to the Owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, at the option of the owner thereof, Bonds of like Series, maturity and interest rate in any of the authorized denominations. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like Series, maturity and interest rate to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been mailed as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of such Series, maturity and interest rate so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, unless, in the case of any conditional notice, the conditions thereof are not satisfied or such notice is rescinded, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Notwithstanding the foregoing, Bonds or portions thereof that have been called for redemption may be purchased and, if deemed paid, thereupon no longer shall be or be deemed to be a Bond called for redemption.

[End of Article IV]

## ARTICLE V

### LIEN OF INDENTURE; ESTABLISHMENT OF FUND AND ACCOUNTS; APPLICATION OF FUNDS

**501. Lien Created by Indenture.** 1. The Trust Estate is hereby assigned and pledged to the Trustee and Co-Trustee for the benefit of the Owners of the Bonds, the holders of the Interim Financing Notes and the holders, issuers or other parties to Parity Obligations, as security for the payment of the principal and Redemption Price of and interest on the Bonds, payment of the Interim Financing Notes and payments due under Parity Obligations, in each case in accordance with their terms and the provisions of the Indenture, subject to the use of the Trust Estate for the purposes and on the terms and conditions provided in the Indenture. Nothing contained herein shall prevent an Enhancement Facility from being provided with respect to any particular Bonds, Interim Financing Notes or Parity Obligations and not others, or different reserves being provided pursuant to this Article V with respect to Bonds than are provided for Parity Obligations, or with respect to particular Parity Obligations than are provided for other Parity Obligations.

2. The Department represents that, pursuant to California Government Code Section 5451 and California Water Code Section 80132(g), this Indenture creates a valid and binding pledge of the Trust Estate for the benefit of the Owners of the Bonds, the holders of the Interim Financing Notes and the holders, issuers or other parties to Parity Obligations, as security for the payment of the Bonds, Interim Financing Notes and Parity Obligations, respectively, to the extent set forth herein, enforceable in accordance with the terms hereof. The pledge created by this Indenture shall be valid and binding from and after the date this Indenture is executed and delivered, and the Trust Estate shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Department irrespective of whether such parties have notice thereof.

3. The Bonds, Interim Financing Notes and Parity Obligations shall not be payable from any income, receipts, or revenues of the Department other than those included in the Trust Estate, except as permitted by the second sentence of subsection 1 of this Section 501, nor shall the Bonds, Interim Financing Notes or Parity Obligations constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the property or upon any of the income, receipts, or revenues of the Department, except the Trust Estate.

4. The Bonds, Interim Financing Notes, Parity Obligations, Subordinated Obligations and Subordinated Indebtedness and all other amounts payable by the Department under the Indenture (i) shall not be or be deemed to constitute a debt or liability of the State or of any political subdivision thereof, other than, to the extent provided in the Indenture, the Department, or a pledge of the faith and credit of the State or of any such political subdivision, other than the Department to the extent provided in the Indenture, but shall be payable solely from the funds pledged therefor pursuant to the Indenture, and (ii) shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.



5. Subordinated Obligations and Subordinated Indebtedness may be secured by the Trust Estate, pursuant to a Supplemental Indenture, to the extent not contrary or inconsistent with the Indenture as theretofore in effect.

**502. Establishment of Fund and Accounts.** 1. The Electric Power Fund, as established in the State Treasury by the Act, is hereby continued under and made subject to the Indenture. As provided in the Act, the Electric Power Fund constitutes a continuation of the Department of Water Resources Electric Power Fund established by Senate Bill No. 7X.

2. There are hereby established in the Electric Power Fund seven separate accounts, to be known as the “Operating Account”, the “Priority Contract Account”, the “Bond Charge Collection Account”, the “Bond Charge Payment Account”, the “Debt Service Reserve Account”, the “Operating Reserve Account” and the “Administrative Cost Account”. The Department may establish one or more additional funds, accounts or subaccounts, if not inconsistent with any Rate Agreement, by delivering to the Trustee a direction to that effect signed by an Authorized Officer, except to the extent the establishment thereof is required by other provisions of the Indenture.

3. The Operating Account, the Priority Contract Account, the Operating Reserve Account, the Bond Charge Collection Account and the Administrative Cost Account shall be under the control of the Department, except if an Event of Default shall happen and shall not have been remedied, in which case the Operating Account, the Priority Contract Account, the Operating Reserve Account, the Bond Charge Collection Account and the Administrative Cost Account shall be under the control of the Treasurer as Trustee. The Bond Charge Payment Account and the Debt Service Reserve Account shall be under the control of the Treasurer as Trustee at all times; provided, however, that moneys in the Bond Charge Payment Account may be held by any Paying Agent to the extent determined by the Trustee to be necessary or desirable as an administrative convenience.

4. All moneys and securities deposited under the Indenture in any fund, account or subaccount shall be held in trust for the benefit of the Department, the Owners of the Bonds, the holders of the Interim Financing Notes, and the parties to or holders of Parity Obligations, in each case to the extent provided in the Indenture, and applied only in accordance with the provisions of the Indenture, and each of such funds, accounts and subaccounts shall be a trust fund for purposes set forth in the Indenture.

**503. Electric Power Fund – Operating Account.** 1. The Department shall pay or cause to be paid into the Operating Account (i) upon the delivery of the initial Series of Bonds, all moneys and securities on deposit in the Electric Power Fund, except as may be provided by Supplemental Indenture, (ii) as and when received, all net proceeds of Bonds, except as may be provided by Supplemental Indenture, and (iii) all Power Charge Revenues and other Revenues, other than (x) Bond Charge Revenues and (y) payments to the Department under Qualified Swaps relating to Bonds. Net proceeds of Bonds shall be paid out or transferred pursuant to subsection 2 of this Section 503. Other amounts in the Operating Account shall be paid out, transferred, retained, accumulated or withdrawn from time to time for the following purposes and, as of any time, in the following order of priority:

(a) Amounts in the Operating Account shall be transferred to the Priority Contract Account on or before the fifth Business Day of each month in such amount as is necessary to make the amount in the Priority Contract Account sufficient to pay Priority Contract Costs estimated to be due during the balance of such month and for the first five Business Days of the next succeeding month. Additional amounts in the Operating Account also shall be transferred to the Priority Contract Account, at any time, to the extent amounts on deposit in the Priority Contract Account are insufficient to pay Priority Contract Costs then payable. Amounts on deposit in the Priority Contract Account shall be used solely to pay Priority Contract Costs then payable.

(b) Amounts in the Operating Account shall be applied to the payment of Operating Expenses then due and owing, other than Priority Contract Costs and any other costs specified in another paragraph of this subsection 1; provided, however, that Operating Expenses that constitute administrative costs described in Section 509 shall be paid through the Administrative Cost Account pursuant to Section 509 subject to the priority afforded Priority Contract Costs pursuant to paragraph (a) of this subsection 1.

(c) Amounts in the Operating Account shall be applied to the payment of the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement, as and when due and payable.

(d) Amounts in the Operating Account shall be withdrawn and deposited in the Bond Charge Collection Account to reimburse the Bond Charge Collection Account for any amounts previously transferred therefrom (i) pursuant to paragraph (a) of subsection 1 of Section 505, to the Priority Contract Account for the payment of Priority Contract Costs, and (ii) pursuant to paragraph (b) of subsection 1 of Section 505, to the Operating Account for the payment of the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement.

(e) Amounts in the Operating Account shall be applied as provided by subsection 7 of Section 506, but only to the extent not paid from the Bond Charge Payment Account. In addition, prior to the time Bond Charge Revenues are received in amounts sufficient to make the transfers required by subsection 1 of Section 506, amounts in the Operating Account shall be transferred to the Bond Charge Payment Account in the amounts, at the times and otherwise as required by said subsection 1.

(f) Amounts in the Operating Account shall be withdrawn to deposit in the Debt Service Reserve Account amounts as provided by Section 507, but only to the extent such deposit is required as a result of (A) the use of Bond Charge Revenues for the payment of Priority Contract Costs, or for the payment of the Interim Financing Notes or other amounts payable by the Department under the Credit and Security Agreement, pursuant to paragraphs (a) or (b) of subsection

1 of Section 505, or (B) a change in value of Authorized Investments on deposit in the Debt Service Reserve Account.

(g) Amounts in the Operating Account shall be withdrawn to repay to the General Fund of the State advances made to the Department from amounts appropriated to the Electric Power Fund after November 15, 2001, including interest thereon payable at the Pooled Money Investment Rate, to the extent not theretofore repaid. The Department shall file with the Trustee, on or prior to the delivery of the initial Series of Bonds, a statement of the outstanding amount required to be repaid to the General Fund and promptly shall revise the same, and file such revised statement with the Trustee, upon each repayment until no amount remains to be repaid.

(h) Amounts in the Operating Account shall be withdrawn to repay to the General Fund of the State advances made to the Department from amounts appropriated to the Electric Power Fund, and General Fund moneys expended by the Department pursuant to the 2001 Emergency Measures, on or prior to November 15, 2001, including interest payable thereon at the Pooled Money Investment Rate, to the extent not theretofore repaid, in accordance with the schedule described in the immediately succeeding sentence. At such time as a schedule is established by the Commission for repayments to the General Fund described in this paragraph (h), the Department shall file such schedule with the Trustee, and shall promptly file with the Trustee each revised schedule that is similarly established until no amount remains to be repaid.

(i) Amounts in the Operating Account shall be withdrawn to deposit in the Operating Reserve Account amounts as provided by Section 508.

(j) Amounts in the Operating Account shall be withdrawn for the following purposes, on a parity basis:

(i) to pay the principal of and interest on any Subordinated Indebtedness, and the redemption price or purchase price of Subordinated Indebtedness payable from mandatory sinking fund installments therefor,

(ii) to the extent not paid from the proceeds of Subordinated Indebtedness, to pay costs of issuing Subordinated Indebtedness or costs incidental to their payment and security,

(iii) to pay amounts due under any Subordinated Obligation, but only to the extent not paid from the Bond Charge Payment Account, and

(iv) to establish and maintain reserves for the payment of Subordinated Indebtedness or Subordinated Obligations to the extent required by a Financing Document; provided, however, that such a reserve may also be accumulated in the Operating Account. Any such reserve for Subordinated Indebtedness or Subordinated Obligations

accumulated in the Operating Account shall be maintained in a separate subaccount which shall be established therein for such respective purpose pursuant to subsection 2 of Section 502.

(k) Amounts remaining in the Operating Account may be withdrawn for any purpose relating to the Department's program for the purchase and sale of Power and related activities only as permitted under the Enabling Measures, to the extent not specified in paragraphs (a) through (j) of this subsection 1, as determined by the Department, including, without limitation, to pay or provide for the purchase or redemption of Bonds or Subordinated Indebtedness, and the payment of expenses in connection therewith to the extent not constituting Operating Expenses. Purchases of Bonds or Subordinated Indebtedness from amounts in the Operating Account pursuant to this paragraph (k) shall be made at the written direction of an Authorized Officer filed with the Trustee, with or without advertisement and with or without notice to other Owners of Bonds or Subordinated Indebtedness. Such purchases shall be made at such price or prices as determined by the Department, subject to limitations, if any, of the Supplemental Indenture authorizing the issuance of such Series of Bonds; provided, however, that such purchases shall be made at prices exceeding the next applicable Redemption Price (or, if none, the principal amount) of such Bonds, plus accrued interest, if any, only after consultation with the Commission and if the Department determines that to do so will not result in any insufficiency in the Operating Account or the Bond Charge Payment Account for any other purpose.

It shall be a condition to any withdrawal pursuant to paragraphs (j) and (k) of this subsection 1 that (1) there shall be no deficiency in either the Debt Service Reserve Account or the Operating Reserve Account without regard to the operation of the provisions of subsections 3 and 6 of Section 507 and subsection 4 of Section 508 permitting the replenishment thereof over time, and (2) the Department shall have determined, taking into account, among other considerations, anticipated future receipts of Revenues and other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not, and are not expected to be, needed for any of the purposes set forth in any prior lettered paragraph of this subsection 1.

Notwithstanding the foregoing provisions of this subsection 1, if at any time the Department determines that Power Charge Revenues are available for any of the purposes set forth in paragraph (j) or (k) of this subsection 1, (i) such Power Charge Revenues shall instead be used to satisfy any remaining outstanding amounts due under the Interim Financing Notes and the Credit and Security Agreements and to the General Fund of the State (without regard to any schedule for repayment referred to in paragraph (h) of this subsection 1), and to replenish any deficiency in the Debt Service Reserve Account and the Operating Reserve Account (without regard to the provisions of subsections 3 and 6 of Section 507 and subsection 4 of Section 508 permitting the replenishment thereof over time), in the order of priority established by subsection 1 of this Section 503, until the Interim Financing Notes, the Credit and Security Agreement and the General Fund, and all interest payable as described in paragraphs (g) and (h) of this subsection 1, shall be paid in full, and there shall be no deficiency in the Debt Service Reserve Account or the Operating Reserve Account, and (ii) after all outstanding amounts due under the Interim Financing Notes and Credit and Security Agreement, and to the General Fund of the

State, and all interest payable as described by paragraphs (g) and (h) of this subsection 1, shall be paid in full, and any deficiency in the Debt Service Reserve Account and the Operating Reserve Account shall be replenished, any use of such Power Charge Revenues for any of the purposes set forth in such paragraphs (j) and (k) shall require the consent of the Commission.

2. Amounts in the Operating Account representing proceeds of each Series of Bonds shall be paid out or transferred from time to time by the Department to pay Costs of the Department, subject to limitations, if any, of the Supplemental Indenture authorizing the issuance of such Series of Bonds.

3. That amount, if any, set aside by the Department as reserves in subaccounts in the Operating Account for the purposes specified in clause (iv) of paragraph (j) of subsection 1 of this Section 503 shall be used by the Department solely for the respective purposes specified in said clauses, shall not be available for the payment of any other purpose for which amounts in the Operating Account may be applied, and shall not constitute part of the Trust Estate.

4. The Department shall separately notify the Commission in writing whenever the Minimum Operating Expense Available Balance has been reduced as a result of the Department no longer purchasing the Residual Net Short. Whenever such reduction in the Minimum Operating Expense Available Balance occurs, any resulting excess in the Operating Account shall be utilized in the same manner as Excess Amounts are required to be utilized pursuant to subsection 5 of Section 508.

5. While the Department is purchasing the Residual Net Short, if on any date the Operating Account balance falls below \$750 million, unless the Operating Account balance has been restored to at least the Minimum Operating Expense Available Balance on the thirty-first (31<sup>st</sup>) day thereafter, then on or prior to the forty-fifth (45<sup>th</sup>) day following the date on which the Operating Account balance fell below \$750 million, the Department will submit a new Revenue Requirement to the Commission providing for Revenues sufficient to restore the Operating Account to the Minimum Operating Expense Available Balance within a period ending no later than two hundred forty (240) days following the date of the submission of such new Revenue Requirement to the Commission. While the Department is purchasing the Residual Net Short, if on any date the Operating Account balance falls below \$500 million and the Department has not yet submitted a Revenue Requirement pursuant to the preceding sentence, then on or prior to the earlier of (a) the tenth (10<sup>th</sup>) Business Day following the date on which the Operating Account balance falls below \$500 million or (b) the date on which a Revenue Requirement is required to be submitted to the Commission in accordance with the preceding sentence, the Department will submit a new Revenue Requirement to the Commission providing for Revenues sufficient to restore the Operating Account to the Minimum Operating Expense Available Balance within a period ending no later than two hundred forty (240) days following the date of the submission of such new Revenue Requirement to the Commission.

6. If and when the Department no longer is responsible for the payment of costs under any Power Supply Contract, all amounts in the Operating Account shall be utilized in the same manner as Excess Amounts are required to be utilized pursuant to subsection 5 of Section 508; provided, however, that amounts required to satisfy a particular contingency shall

be retained in the Operating Account only until the contingency has been satisfied or discharged; and provided further, however, that there may be retained in the Operating Account the amount, if any, determined by the Department to be required to pay Bond Related Costs that otherwise would have to be paid from the Bond Charge Payment Account pursuant to paragraph (d) of subsection 1 of Section 506; and provided further, however, that any amounts not required for the purposes described in the preceding provisos shall be utilized in the same manner as Excess Amounts are required to be utilized pursuant to subsection 5 of Section 508.

**504. Electric Power Fund – Priority Contract Account.** 1. Amounts transferred to the Priority Contract Account from the Operating Account pursuant to paragraph (a) of subsection 1 of Section 503, from the Operating Reserve Account pursuant to subsection 3 of Section 508 or from the Bond Charge Collection Account pursuant to paragraph (a) of subsection 1 of Section 505, shall be applied solely to the payment of Priority Contract Costs.

2. If and when the Department no longer is responsible for the payment of costs under any Priority Long Term Power Contract, the balance if any, on deposit in the Priority Contract Account shall be utilized in the same manner as Excess Amounts are required to be utilized pursuant to subsection 5 of Section 508.

**505. Electric Power Fund – Bond Charge Collection Account.** 1. The Department shall pay or cause to be paid into the Bond Charge Collection Account, as and when received, (i) all Bond Charge Revenues and (ii) all payments to the Department under Qualified Swaps with respect to Bonds. Bond Charge Revenues shall be paid out, transferred, retained, accumulated or withdrawn from time to time for the following purposes and, as of any time, in the following order of priority:

(a) Amounts in the Bond Charge Collection Account shall be withdrawn and deposited in the Priority Contract Account, upon the written direction of an Authorized Officer filed with the Trustee, for the purpose of paying Priority Contract Costs then due and payable, but only to the extent moneys are not available for such purpose in the Operating Account, the Priority Contract Account or the Operating Reserve Account; provided, however, that no such withdrawal shall be made if and when the Department no longer is responsible and liable for the payment of costs under any Priority Long Term Power Contract.

(b) Amounts in the Bond Charge Collection Account shall be withdrawn and deposited in the Operating Account, upon the written direction of an Authorized Officer filed with the Trustee, for the purpose of paying the principal of and interest on the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement, as and when due and payable, but only to the extent moneys are not available for such purpose in the Operating Account or in the Operating Reserve Account.

(c) Amounts in the Bond Charge Collection Account shall be transferred to the Bond Charge Payment Account and applied for the purposes of,

in the amounts and at the times required by, and otherwise as provided in, Section 506.

(d) Amounts in the Bond Charge Collection Account shall be withdrawn for the following purposes, on a parity basis:

(i) to deposit in the Debt Service Reserve Account amounts as provided by Section 507, but only to the extent amounts are not available therefor pursuant to paragraph (f) of subdivision 1 of Section 503, and

(ii) upon the written direction of an Authorized Officer filed with the Trustee, to establish and maintain reserves for the payment of Parity Obligations to the extent required by a Financing Document. Any such reserve for Parity Obligations accumulated in the Bond Charge Collection Account shall be maintained in a separate subaccount which shall be established therein for such purpose pursuant to subsection 2 of Section 502.

2. That amount, if any, set aside as reserves in subaccounts in the Bond Charge Collection Account pursuant to clause (ii) of paragraph (d) of subsection 1 of this Section 505 shall be used by the Department solely for the respective purposes specified in said clause, shall not be available for the payment of any other purpose for which amounts in the Bond Charge Payment Account may be applied, and shall not constitute part of the Trust Estate.

**506. Electric Power Fund – Bond Charge Payment Account.** 1. There shall be transferred from the Bond Charge Collection Account to the Bond Charge Payment Account pursuant to paragraph (c) of subsection 1 of Section 505, no later than the last Business Day of each calendar month, the amount, if any, required so that the balance in the Bond Charge Payment Account and available for Bond Related Costs as specified below shall at least equal the respective amounts as follows, on a parity basis:

(a) the Debt Service accrued and unpaid as of such Business Day and to accrue thereafter through the end of the third (3<sup>rd</sup>) next succeeding calendar month;

(b) the amount accrued and unpaid as of such Business Day and estimated to be payable in the next succeeding three (3) calendar months (i) under Reimbursement Obligations, (ii) under agreements, constituting Parity Obligations, relating to other financial instruments entered into in connection with the Bonds, including, but not limited to, investment agreements, hedges, interest rate swaps, caps, options and forward purchase agreements, (iii) under agreements relating to the remarketing of Bonds, including, but not limited to, remarketing agreements, dealer agreements and auction agent agreements, (iv) for any Subordinated Obligations constituting Bond Related Costs, and (v) otherwise as may be permitted by a Rate Agreement to be paid from Bond Charge Revenues or the Bond Charge Payment Account;

(c) the amount accrued and unpaid as of such Business Day and estimated to be payable in the next succeeding three (3) calendar months for the cost to the Department of Fiduciaries associated with the issuance and administration of the Bonds; and

(d) if and when the Department no longer is responsible for the payment of costs under any Power Supply Contract and Bonds remain Outstanding, the amount accrued and unpaid as of such Business Day and estimated to be payable in the next succeeding three (3) calendar months for the Department's Bond Charge servicing costs, costs of preparing and providing the information and reports required under the Financing Documents, the 2002 Rate Agreement and the Act, related audit, legal and consulting costs, related administrative costs, and costs of complying with arbitrage restrictions and rebate requirements, and otherwise as may be permitted by a Rate Agreement to be paid from Bond Charge Revenues or the Bond Charge Collection Account to the extent moneys are not available therefor in the Operating Account; provided, however, that administrative costs described in Section 509 shall be paid through the Administrative Cost Account pursuant to Section 509.

For the purpose of computing the amount to be deposited in the Bond Charge Payment Account pursuant to the foregoing provisions of this Section 506, there shall be excluded from the balance in the Bond Charge Payment Account (i) the amount, if any, set aside in the Bond Charge Payment Account from the proceeds of Bonds for the payment of interest on Bonds which, pursuant to subsection 6 of this Section 506, is to be applied on an interest payment date or dates occurring after the period specified above in this paragraph, and (ii) amounts scheduled to be paid by the Department under Qualified Swaps within the relevant period. The estimates required by the foregoing provisions of this Section 506 shall be made by the Department, based on such assumptions and projections as the Department deems to be appropriate after consultation with the Commission, and shall be included in a written direction of an Authorized Officer filed with the Trustee.

In addition to the foregoing provisions of this Section 506, there shall be transferred from the Bond Charge Collection Account to the Bond Charge Payment Account, no later than the time required to make the payments required by subsection 3 of this Section 506, the amount, if any, required, in good funds, so that the balance in the Bond Charge Payment Account and available for the purpose shall at least equal the amount required to be paid pursuant to such subsection 3 at such time.

2. The Redemption Price of any Bonds called for redemption, other than to satisfy Sinking Fund Installment requirements, may be deposited in the Bond Charge Payment Account from the Bond Charge Collection Account or, pursuant to paragraph (k) of subsection 1 of Section 503, from the Operating Account, in the amounts and at the times required therefor, in each case subject to any limitation set forth in any conditional notice of redemption as permitted by Section 405. The Redemption Price of any Bonds called for redemption to satisfy Sinking Fund Installment requirements shall be deposited in the Bond Charge Payment Account pursuant to paragraph (a) of subdivision 1 of this Section 506.



3. The Trustee shall pay Bond Related Costs out of the Bond Charge Payment Account as follows:

(a) The Trustee shall pay to the respective Paying Agents (i) on or before each interest payment date for any of the Bonds, whether scheduled or upon earlier redemption, the amount required for the interest payable on such date; (ii) on or before each Principal Installment due date, the amount required for the Principal Installment payable on such date; and (iii) on or before any redemption date for the Bonds, to the extent of moneys deposited in the Bond Charge Payment Account therefor, the amount required for the payment of the Redemption Price of the Bonds then to be redeemed. Such amounts shall be applied by the Paying Agents to such purposes on or before the due dates thereof.

(b) The Trustee shall pay to the holder or issuer of each Parity Obligation specified in paragraph (b) of subsection 1 of this Section 506 and their participants to which an amount is due and payable thereunder, or other Person to whom an amount specified in such paragraph (b) is due and payable, such amounts and at such times as shall be specified in a written direction of an Authorized Officer filed with the Trustee.

(c) The Trustee shall pay to each Person to whom an amount specified in paragraph (c) of subsection 1 of this Section 506 is due and payable, in such amounts and at such times as shall be specified in a written direction of an Authorized Officer filed with the Trustee.

(d) The Trustee shall pay to each Person to whom an amount specified in paragraph (d) of subsection 1 of this Section 506 is due and payable, in such amounts and at such times as shall be specified in a written direction of an Authorized Officer filed with the Trustee.

4. Amounts accumulated in the Bond Charge Payment Account with respect to any Sinking Fund Installment (together with amounts accumulated therein with respect to interest on the Bonds for which such Sinking Fund Installment was established) may and, if so directed in writing by an Authorized Officer, shall be applied by the Trustee, on or prior to the forty-fifth (45<sup>th</sup>) day preceding the due date of such Sinking Fund Installment, to (i) the purchase of Bonds of the Series, maturity and interest rate within each maturity for which such Sinking Fund Installment was established, subject to subsection 10 of this Section 506, or (ii) the redemption at the applicable sinking fund Redemption Price of such Bonds, if then redeemable by their terms. The applicable sinking fund Redemption Price (or principal amount of maturing Bonds) of any Bonds so purchased or redeemed shall be deemed to constitute part of the Bond Charge Payment Account until such Sinking Fund Installment date, for the purpose of calculating the amount of such Account. After the forty-fifth (45<sup>th</sup>) day preceding the due date of any such Sinking Fund Installment, the Trustee shall proceed to call for redemption, by giving notice as provided in Section 405, on such due date, Bonds of the Series, maturity and interest rate within each maturity for which such Sinking Fund Installment was established (except in the case of Bonds maturing on a Sinking Fund Installment date) in such amount as shall be necessary to complete the retirement of the unsatisfied balance of such Sinking Fund Installment after

making allowances for any Bonds purchased or redeemed which the Department has directed the Trustee to apply as a credit against such Sinking Fund Installment as provided in subsection 5 of this Section 506.

5. If at any time Bonds of any Series or maturity for which Sinking Fund Installments shall have been established are purchased or redeemed other than pursuant to subsection 4 of this Section 506, or are deemed to have been paid pursuant to subsection 2 of Section 1101, and, with respect to such Bonds which are deemed paid, irrevocable instructions have been given to the Trustee to redeem or purchase the same on or prior to the due date of the Sinking Fund Installment to be credited under this Section 506, an Authorized Officer may from time to time and at any time by written notice to the Trustee specify the portion, if any, of such Bonds so purchased, redeemed or deemed to have been paid and not previously applied as a credit against any Sinking Fund Installment which are to be credited against future Sinking Fund Installments for such Bonds, but in all cases subject to subsection 10 of this Section 506. Such notice shall specify the amounts of such Bonds to be applied as a credit against such Sinking Fund Installment or Installments and the particular Sinking Fund Installment or Installments against which such Bonds are to be applied as a credit; provided, however, that none of such Bonds may be applied as a credit against a Sinking Fund Installment to become due less than forty-five (45) days after such notice is delivered to the Trustee. All such Bonds which have been purchased or redeemed and are to be applied as a credit shall be surrendered to the Trustee for cancellation on or prior to the due date of the Sinking Fund Installment against which they are being applied as a credit. The portion of any such Sinking Fund Installment remaining after the deduction of any such amounts credited toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments due on a future date.

6. The amount, if any, deposited in the Bond Charge Payment Account from the proceeds of any Series of Bonds shall be applied to the payment of interest on the Bonds, or paid to the issuers of Enhancement Facilities to satisfy Reimbursement Obligations relating to such interest, if any, paid under such Enhancement Facilities, in accordance with written directions signed by an Authorized Officer and filed with the Trustee or, in the event that the Department shall modify or amend any such direction by a subsequent direction signed by an Authorized Officer of the Department and filed with the Trustee, then in accordance with the most recent such direction or amended direction.

7. If at any time the amount in the Bond Charge Payment Account shall be less than the amount required to be on deposit pursuant to paragraphs (a), (b) and (c) of subsection 1 of this Section 506 at the times required thereby, or to pay the items of cost specified in paragraphs (a), (b) and (c) of subsection 3 of this Section 506 when due and payable, the Department shall apply all available amounts, if any, in the Operating Account to such deposits or payments, as the case may be on a parity basis.

If at any time, after the application of moneys pursuant to the preceding sentence, the amount in the Bond Charge Payment Account shall be less than the amount required to pay the items of cost specified in paragraphs (a), (b) and (d) of said subsection 3, all available amounts, if any, in the Debt Service Reserve Account shall be applied to such purposes on a

parity basis. Any such application of moneys from the Operating Account or the Debt Service Reserve Account may be made directly or through the Bond Charge Payment Account.

8. In the event of the refunding of any Bonds, the Trustee shall, upon the written direction of an Authorized Officer, withdraw from the Bond Charge Payment Account all or any portion of amounts accumulated therein with respect to the principal of and redemption premium, if any, and interest on the Bonds being refunded and apply such amounts in accordance with such direction; provided, however, that such withdrawal shall not be made unless (i) immediately thereafter the Bonds being refunded shall be deemed to have been paid pursuant to subsection 2 of Section 1101, and (ii) subject to subsection 9 of this Section 506, the amount remaining in the Bond Charge Payment Account with respect to Debt Service on Bonds, after such withdrawal, shall be sufficient to satisfy the requirements of subsection 1 of this Section 506.

9. Whenever there shall be held in the Bond Charge Payment Account, and in the Debt Service Reserve Account, without giving effect to any Alternate Debt Service Reserve Account Deposit, an aggregate amount sufficient to pay in full all Outstanding Bonds in accordance with their terms (including the maximum amount of principal or applicable sinking fund Redemption Price and interest which could become payable thereon), no transfers shall be required to be made to the Bond Charge Payment Account.

10. Any purchases of Bonds pursuant to subsection 4 or 5 of this Section 506 shall be made at the direction of an Authorized Officer filed with the Trustee, with or without advertisement and with or without notice to other Owners of Bonds. Such purchases shall be made at such price or prices as determined by an Authorized Officer; provided, however, that such purchases may be made at prices exceeding the next applicable Redemption Price (or, if none, the principal amount) of such Bonds, plus accrued interest, if any, only after consultation with the Commission and if the Department determines that to do so will not result in any insufficiency in the Bond Charge Payment Account for any other purpose. The Trustee shall pay out or cause to be paid out of the Bond Charge Payment Account the accrued interest included in the purchase price of Bonds purchased for retirement. All expenses in connection with the purchase or redemption of Bonds shall be paid by the Department from the Operating Account or, if moneys are no longer available in the Operating Account, from the Bond Charge Collection Account.

**507. Electric Power Fund – Debt Service Reserve Account.** 1. At the time any Series of Bonds is delivered pursuant to the Indenture, the Department shall pay into the Debt Service Reserve Account from the proceeds of such Bonds or other available funds, the amount, if any, necessary for the amount on deposit in the Debt Service Reserve Account to equal the Debt Service Reserve Requirement, after giving effect to any Alternate Debt Service Reserve Account Deposit, calculated immediately after the delivery of such Series of Bonds.

2. Amounts on deposit in the Debt Service Reserve Account shall be applied as provided in this Section 507 and in subsection 7 of Section 506. Fiduciary charges and expenses (including, but not limited to, legal fees and expenses) shall not be paid from the Debt Service Reserve Account.

3. If a deficiency exists in the Debt Service Reserve Account, no later than the last Business Day of each calendar month the Department shall transfer (i) to the extent such transfer is required as a result of the use of Bond Charge Revenues for the payment of Priority Contract Costs, or the payment of the principal of and interest on the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement, pursuant to paragraph (a) or (b) of subsection 1 of Section 505, or a change in value of investments, *first*, from the Operating Account to the extent that there are sufficient moneys available therein, pursuant to paragraph (f) of subsection 1 of Section 503, and *second*, to the extent necessary, from the Bond Charge Collection Account, to the extent that there are sufficient moneys available therein, pursuant to clause (i) of paragraph (d) of subsection 1 of Section 505, and (ii) to the extent such transfer is required otherwise than as described in clause (i), or in the event transfers pursuant to clause (i) are not sufficient, from the Bond Charge Collection Account to the extent that there are sufficient moneys available therein, and deposit in the Debt Service Reserve Account the amount, if any, required for the amount on deposit in the Debt Service Reserve Account to equal the Debt Service Reserve Requirement as of the last day of such calendar month, after giving effect to any Alternate Debt Service Reserve Account Deposit; provided, however, that any deficiency in the Debt Service Reserve Account, after giving effect to any Alternate Debt Service Reserve Account Deposit, may be cured by depositing into the Debt Service Reserve Account, each month during the period commencing no later than the seventh month following such determination of the deficiency, approximately equal or greater amounts such that the deficiency shall be cured by no later than the twelfth month following such determination of the deficiency.

4. Any amount in the Debt Service Reserve Account in excess of the Debt Service Reserve Requirement, after giving effect to any Alternate Debt Service Reserve Account Deposit, may be retained therein or, upon the written direction of an Authorized Officer filed with the Trustee, may be transferred to the Bond Charge Collection Account; provided, however, that any such excess as of the last Business Day of each calendar year shall be so transferred.

5. Whenever the amount in the Debt Service Reserve Account, without giving effect to any Alternate Debt Service Reserve Account Deposit, together with the amount in the Bond Charge Payment Account with respect to Debt Service on Bonds, is sufficient to pay in full all Outstanding Bonds in accordance with their terms (including the maximum amount of principal or applicable sinking fund Redemption Price and interest which could become payable thereon), the funds on deposit in the Debt Service Reserve Account shall be transferred to the Bond Charge Payment Account, and thereupon no further deposits shall be required to be made into the Debt Service Reserve Account. Prior to said transfer, all investments held in the Debt Service Reserve Account shall be liquidated to the extent necessary in order to provide for the timely payment of principal and interest (or Redemption Price) on Bonds.

6. Alternate Debt Service Reserve Account Deposits may be made for the benefit of the Owners of the Bonds as provided in this subsection 6. In lieu of any required transfers of moneys to the Debt Service Reserve Account, the Department may cause to be deposited into the Debt Service Reserve Account for the benefit of the Owners of the Bonds an Alternate Debt Service Reserve Account Deposit in an aggregate amount equal to the difference between the Debt Service Reserve Requirement and the sums of moneys or value of Authorized Investments then on deposit in the Debt Service Reserve Account, if any. In lieu of retaining all

or any portion of the moneys theretofore on deposit in the Debt Service Reserve Account, the Department may cause to be deposited into the Debt Service Reserve Account an Alternate Debt Service Reserve Account Deposit in an aggregate amount equal to such moneys, subject to subsection 4 of this Section 507. Each Alternate Debt Service Reserve Account Deposit shall be payable (upon the giving of notice as required thereunder) on any date on which moneys may be required to be withdrawn from the Debt Service Reserve Account and applied to the payment of a Principal Installment of or interest on any Bonds, or to reimburse any issuer of an Enhancement Facility constituting a Parity Obligation for any such payment made by such issuer, and such withdrawal cannot be met by amounts on deposit in the Debt Service Reserve Account. Any insurer providing an Alternate Debt Service Reserve Account Deposit surety bond or insurance policy shall be an insurer whose municipal bond insurance policies insuring the payment, when due, of the principal of and interest on municipal bond issues results in such issues being rated in the highest Rating Category by at least one (1) Rating Agency. Any Alternate Debt Service Reserve Account Deposit letter of credit issuer shall be a bank or trust company which on the date of issuance of the letter of credit has an outstanding unsecured, uninsured and unguaranteed debt issue which is rated in the highest Rating Category by at least one (1) Rating Agency. Any provider of any other Alternate Debt Service Reserve Account Deposit obligation shall have the qualifications set forth in a Supplemental Indenture; provided, however, that prior to the deposit of such other Alternate Debt Service Reserve Account Deposit obligation in the Debt Service Reserve Account, the Trustee shall have received written confirmation from each Rating Agency to the effect that the deposit of such Alternate Debt Service Reserve Account Deposit will not, by itself, result in the withdrawal, suspension or downgrade of any rating issued by such Rating Agency with respect to any Outstanding Bonds. If a disbursement is made pursuant to an Alternate Debt Service Reserve Account Deposit, the Department shall either (i) reinstate the maximum limits of such Alternate Debt Service Reserve Account Deposit or (ii) deposit into the Debt Service Reserve Account funds in the amount of the disbursement made under such Alternate Debt Service Reserve Account Deposit, or a combination of such alternatives, at the times and in the amounts required by subsection 3 of this Section 507. In the event that the rating attributable to any provider of any Alternate Debt Service Reserve Account Deposit shall fall below that required as provided above, such Alternate Debt Service Reserve Account Deposit shall no longer be deemed to be an Alternate Debt Service Reserve Account Deposit and the Department shall either (i) replace such Alternate Debt Service Reserve Account Deposit with an Alternate Debt Service Reserve Account Deposit which shall meet the requirements provided above or (ii) deposit into the Debt Service Reserve Account sufficient funds, or a combination of such alternatives, at the times and in the amounts required by subsection 3 of this Section 507.

7. In the event of the refunding of any Bonds, the Trustee shall, upon the written direction of an Authorized Officer, withdraw from the Debt Service Reserve Account all or any portion of amounts accumulated therein with respect to the Bonds being refunded and apply such amounts in accordance with such direction; provided, however, that such withdrawal shall not be made unless (i) immediately thereafter the Bonds being refunded shall be deemed to have been paid pursuant to subsection 2 of Section 1101, and (ii) subject to subsection 5 of this Section 507, the amount remaining in the Debt Service Reserve Account, after giving effect to any Alternate Debt Service Reserve Account Deposit, after such withdrawal shall not be less than the Debt Service Reserve Requirement.

**508. Electric Power Fund – Operating Reserve Account.** 1. At the time any Series of Bonds is delivered pursuant to the Indenture, the Department shall pay into the Operating Reserve Account from the proceeds of such Bonds or other available funds, the amount, if any, necessary for the amount on deposit in the Operating Reserve Account to equal the Operating Reserve Account Requirement.

2. Amounts on deposit in the Operating Reserve Account shall be applied as provided in this Section 508.

3. If at any time the amounts in the Operating Account shall be less than the then current requirements thereof for any payment, retention, accumulation, transfer or withdrawal required by paragraphs (a) through (f) of subsection 1 of Section 503, the Department shall withdraw from the Operating Reserve Account and deposit in the Operating Account the amounts necessary (or all the moneys in the Operating Reserve Account, if less than the amounts necessary), applying available amounts in the order of priority and otherwise as specified in paragraphs (a) through (f) of subsection 1 of Section 503 to make up such deficiency; provided, however, that if and for so long as the balance on deposit in the Operating Reserve Account is equal to or less than the Priority Contract Contingency Reserve Amount, amounts in the Operating Reserve Account may only be withdrawn for deposit in the Priority Contract Account for the payment of Priority Contract Costs.

4. If at any time the amount on deposit in the Operating Reserve Account is less than the Operating Reserve Account Requirement, no later than the last Business Day of each calendar month the Department shall transfer from the Operating Account to the Operating Reserve Account pursuant to paragraph (i) of subsection 1 of Section 503 the amount, if any, required for the Operating Reserve Account to equal the Operating Reserve Account Requirement as of the last day of such calendar month; provided, however, that any deficiency in the Operating Reserve Account may be cured by depositing into the Operating Reserve Account, each month during the period commencing no later than the seventh month following such determination of the deficiency, approximately equal or greater amounts such that the deficiency shall be cured by no later than the twelfth month following such determination of the deficiency.

5. The Department shall separately notify the Commission in writing each time the Operating Reserve Account Requirement is reduced pursuant to the Indenture. Whenever such reduction in the Operating Reserve Account Requirement occurs, any excess amounts in the Operating Reserve Account (“Excess Amounts”) will be used at such time to satisfy any deficiencies existing at such time in the transfers, applications and withdrawals required by paragraphs (a) through (h) of subsection 1 of Section 503, including repayment in full of the General Fund of the State for all advances made to the Department from amounts appropriated to the Electric Power Fund, whether before or after November 15, 2001, including interest payable thereon at the Pooled Money Investment Rate. Unless otherwise agreed by both the Department and the Commission, each acting in its own discretion, any Excess Amounts remaining after application to the uses described in the preceding sentence shall be used, at the direction of the Commission after consultation with the Department, to (i) adjust Department charges or (ii) with the agreement of the Department, reduce debt outstanding under the Indenture, in all instances upon consideration of the interests of the retail customers of the

Electrical Corporations and of the Department, and, if applicable, Electric Service Provider retail customers.

6. If and when the Department no longer is responsible for the payment of costs under any Power Supply Contract, the entire balance, if any, on deposit in the Operating Reserve Account shall be applied as provided by subsection 5 of this Section 508.

**509. Electric Power Fund – Administrative Cost Account.** Notwithstanding anything to the contrary in the Indenture, including, but not limited to, Sections 503, 505 and 506, all administrative costs of the Department incurred in administering Division 27 (commencing with Section 80000) of the Water Code, if and to the extent the payment thereof is subject to appropriation by the State Legislature pursuant to Section 80200(c) of the Water Code or other provision of law, shall be paid and accounted for through the Administrative Cost Account. Transfers shall be made from the Operating Account or, after the Department no longer is responsible for the payment of costs under any Power Supply Contract, the Operating Account or the Bond Charge Payment Account to the extent necessary to permit compliance with this Section 509.

**510. Investment of Funds and Accounts.** Unless otherwise provided in a Supplemental Indenture, all amounts held in any fund, account or subaccount under the Indenture shall be invested by the Trustee in Authorized Investments.

Unless otherwise determined by any Supplemental Indenture, earnings on moneys and investments in (i) the Operating Reserve Account shall be credited to and deposited in the Operating Account, and (ii) any other fund, account or subaccount under the Indenture shall be credited to and deposited in such fund, account or subaccount. Authorized Investments purchased as an investment of moneys in any such fund, account or subaccount shall be deemed at all times to be a part of such fund, account or subaccount, any profit realized from the liquidation of such investment shall be credited thereto and any loss resulting from the liquidation of such investment shall be charged thereto.

[End of Article V]

## ARTICLE VI

### PARTICULAR COVENANTS OF THE DEPARTMENT

The Department covenants and agrees as follows:

**601. Payment of Bonds.** The Department shall duly and punctually pay or cause to be paid from the Trust Estate the principal or Redemption Price, if any, of every Bond and the interest thereon, at the dates and places and in the manner mentioned in the Bonds, according to the true intent and meaning thereof.

**602. Offices for Servicing Bonds.** For so long as the Bonds are issued in book-entry-only form, provisions for their payment, redemption, purchase, registration, transfer or exchange shall be governed by arrangements entered into with the applicable securities depository. At other times, the Department shall maintain one or more offices or agencies where Bonds may be presented for payment, redemption, registration, transfer or exchange.

**603. Power to Issue Bonds and Create Lien; Protection of Security.** 1. The Department is duly authorized under applicable law to issue the Bonds, to execute and deliver the Indenture and to pledge the Trust Estate in the manner and to the extent provided in the Indenture. The Trust Estate, except to the extent provided in Sections 501 and 604, is and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto, and all corporate action on the part of the Department to that end has been and will be duly and validly taken. The Bonds and the provisions of the Indenture are and will be the valid and legally enforceable obligations of the Department in accordance with their terms and the terms of the Indenture.

2. The Department shall at all times, to the extent permitted by law, defend, preserve and protect the pledge created by this Indenture and all interests of the Owners of Bonds, the holders of the Interim Financing Notes and the holders, issuers or other parties to Parity Obligations under the Indenture against all claims and demands of all Persons whomsoever.

3. Without limiting the generality of the foregoing, if any regulatory or judicial investigation of or challenge to any action taken by the Department in the performance of its obligations under the Act, the Indenture or the Rate Agreement is initiated, the Department shall take all legally available action which, in the judgment of the Department, may be necessary or desirable to assure that such challenge will not result in the inability of the Department to pay amounts payable under the Bonds, the Interim Financing Notes and Parity Obligations when due.

**604. Creation of Liens, Issuance of Subordinated Indebtedness, Subordinated Obligations and Debt.** 1. The Department shall not issue any bonds or other evidences of indebtedness or enter into any contractual debt obligations secured by a pledge of the Trust Estate, other than the Bonds and Parity Obligations as provided herein, and shall not create or cause to be created any lien or charge on the Trust Estate except to the extent provided in Section 501; provided, however, that the Department may, at any time, or from time to time,



incur Subordinated Indebtedness or enter into Subordinated Obligations payable out of, and which may be secured by a pledge of, such amounts as may from time to time be available for the purpose of the payment thereof in accordance with paragraph (j) of subsection 1 of Section 503 and such pledge shall be, and shall be expressed to be, subordinate in all respects to the pledge created by the Indenture as security for payment of the Bonds and Parity Obligations; and provided further, however, that nothing contained in the Indenture shall prevent the Department from issuing (i) bonds, notes, or other evidences of indebtedness under another and separate resolution to finance a Separately Financed Program, or (ii) other bonds, notes, or other evidences of indebtedness under another and separate resolution payable from, among other sources, those moneys withdrawn by the Department from the Operating Account pursuant to paragraph (k) of subsection 1 of Section 503.

2. It shall be a condition to the issuance of any Subordinated Indebtedness that the Trustee shall have received each of the documents described in paragraphs (a) through (g) of subdivision 2 of Section 202 as if such paragraphs applied to Subordinated Indebtedness instead of Bonds.

**605. Revenue Requirements.** 1. The Department shall cause to be established, fixed and revised from time to time charges sufficient, together with any other available moneys and securities on deposit in the Electric Power Fund, to satisfy all of the Department's Revenue Requirements at the times and in the amounts needed. Without limiting the generality of the foregoing, such charges shall be sufficient, after taking into account any moneys and securities on deposit in the Operating Account, to produce Revenues sufficient in each calendar year:

(i) to pay all Operating Expenses in such calendar year as the same become due and payable;

(ii) to pay the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement as the same become due and payable;

(iii) to make all deposits to the Bond Charge Payment Account in the amounts and at the times required by Section 506 in such calendar year;

(iv) to pay all Parity Obligations as and when the same become due and payable in such calendar year;

(v) to repay to the General Fund of the State advances made to the Department from amounts appropriated to the Electric Power Fund, and to repay General Fund Moneys expended by the Department pursuant to the 2001 Emergency Measures, including interest thereon payable at the Pooled Money Investment Rate, at the times and in the amounts provided in the Indenture;

(vi) to pay the debt service on all Subordinated Indebtedness then outstanding, and all Subordinated Obligations, as and when the same respectively become due and payable in such calendar year;

(vii) to replenish the Debt Service Reserve Account as and to the extent required by Section 507 in the event of any deficiency therein;

(viii) to replenish the Operating Reserve Account as and to the extent required by Section 508 in the event of any deficiency therein;

(ix) to retain on deposit in or make any deposit to any fund, account or subaccount pursuant to and to the extent necessary under the Act or required by any Financing Document, including, but not limited to, such retentions or deposits as shall be required to maintain the Minimum Operating Expense Available Balance as may be required by subsection 5 of Section 503 or to maintain reserves as may be required by clause (iv) of paragraph (j) of subsection 1 of Section 503, and by clause (ii) of paragraph (d) of subsection 1 of Section 505; and

(x) to pay such other obligations of the Department, payable by the Department, in such calendar year as shall be incurred in accordance with both the Enabling Measures and the Indenture.

The Department will include in its Revenue Requirements amounts estimated to be sufficient:

(a) to cause the amount on deposit in the Operating Account (except any amounts set aside as reserves in subaccounts in the Operating Account for the purposes specified in clause (iv) of paragraph (j) of subsection 1 of Section 503), at all times during any calendar month to equal the Minimum Operating Expense Available Balance;

(b) to cause the amount on deposit in the Bond Charge Collection Account, on the first Business Day of each calendar month, to equal the amounts projected to be required to be paid out of the Bond Charge Payment Account pursuant to subsection 3 of Section 506 in such calendar month, which projections shall be based on such assumptions, and which may take into account a range of possible outcomes, as the Department deems to be appropriate after consultation with the Commission; and

(c) for the payment of interest on Variable Rate Bonds during the relevant Revenue Requirement Period, assuming that interest accrues on such Variable Rate Bonds at a rate equal to the greater of (i) of 130% of the highest average interest rate in any calendar month during the twelve (12) calendar months, or such shorter period that such Variable Rate Bonds shall be Outstanding, ending with the month preceding the date such Revenue Requirements are filed with the Trustee or the Commission, as the case may be, or (ii) 4.0%.

For purposes of the covenant set forth in this paragraph, the Department may take into account the issuance of Bonds or other obligations anticipated to occur prior to the applicable Revenue Requirement Period.

2. No later than 90 days prior to the commencement of each calendar year beginning on and after January 1, 2003, the Department shall file with the Trustee an estimate of the Department's Revenue Requirements for such calendar year. The estimate for each calendar year shall demonstrate compliance with the requirements of subsection 1 of this Section 605, and shall specify, on a monthly basis and in the aggregate for such calendar year, receipts of Revenues and deposits to, retentions in and transfers and withdrawals from the funds, accounts or subaccounts under the Indenture pursuant to subsection 1 of Section 503 and Section 505, including, but not limited to, withdrawals (i) for the payment of Priority Contract Costs and other Operating Expenses, principal and Redemption Price of and interest on Bonds, principal of and interest on the Interim Financing Notes and other amounts payable by the Department under the Credit and Security Agreement, Parity Obligations, Subordinated Obligations and Subordinated Indebtedness, taking into account any proceeds of Bonds or other amounts on deposit in the Operating Account, in the Priority Contract Account, in the Bond Charge Collection Account and in the Bond Charge Payment Account, (ii) to maintain the Debt Service Reserve Account and Operating Reserve Account in the amounts required by Sections 507 and 508, respectively, and (iii) to repay to the General Fund of the State advances made to the Department from amounts appropriated to the Electric Power Fund, including interest thereon payable at the Pooled Money Investment Rate in accordance with the Act at the times and in the amounts provided in the Indenture.

Such estimates may be revised from time to time for any calendar year or for the balance of any then-current calendar year to reflect actual results and revised estimates; provided, however, that such estimates (i) shall be confirmed or revised in each calendar month during which the Department is permitted by the Act to enter into new contracts for the purchase of Power, and (ii) shall be revised as soon as practicable after the amount on deposit in any fund, account or subaccount under the Indenture shall be less than the amount required by the Indenture. Each confirmation or revision required by clause (i) of the foregoing proviso shall be filed with the Trustee as soon as practicable but no later than thirty (30) days (whether or not a Business Day) after the end of each calendar month to which it relates. Each confirmation or revision pursuant to this paragraph shall contain the same information required for the annual estimates by the first paragraph of this subsection 2.

Each such estimate and confirmation or revision thereof shall be accompanied by a written statement from a Consultant to the effect that the estimate or revision, as the case may be, reasonably can be expected to result in Revenues sufficient to satisfy the requirements of the Indenture or, if not, specifying the reasons therefor in reasonable detail.

3. The Department shall submit to the Commission such Revenue Requirements as shall be the subject of Rate Agreements, at such times and in such manner as the Department reasonably determines will enable the Commission to take action with respect thereto pursuant to the Rate Agreements to enable the Department to receive moneys in such amounts and at such times as shall permit the Department to fully comply with the provisions of subsection 1 of this Section 605. Without limiting the generality of the foregoing, the Department shall make projections, submit requests for changes in Revenue Requirements, Bond Charges and Power Charges, and take all other actions as are required of it under or pursuant to Section 4.1(b) and other provisions of the 2002 Rate Agreement, and by the provisions of any other Rate Agreement, to enable the Department to comply with the preceding sentence.

4. During any period in which the Operating Account, Priority Contract Account and Operating Reserve Account shall be under the control of the Treasurer as Trustee pursuant to subsection 3 of Section 502, calculations of the Minimum Operating Expense Available Balance shall be filed by the Department with the Trustee and the Co-Trustee by no later than the last Business Day of each calendar month.

**606. Rate Agreements.** 1. The Department shall enter into and maintain in effect at all times one or more Rate Agreements. Nothing contained in the Indenture shall (i) require the Department to continue to purchase or sell Power or (ii) prevent the Department from assigning, terminating or suspending any Power Supply Contract if (a) a Rate Agreement is in full force and effect, and (b) the Bond Charges established under the Rate Agreement are in full force and effect.

2. The Department shall not voluntarily consent to or permit any amendment, termination or suspension, or waive any provision, of any Rate Agreement unless the Department shall determine, in a written determination signed by an Authorized Officer and delivered to the Trustee, that the same will not have a material adverse affect on the ability of the Department to comply with the provisions of the Indenture, including, but not limited to, Section 605.

3. The Department shall perform all of the obligations and conditions required to be performed and observed by it under each Rate Agreement, and shall take such actions from time to time as shall be necessary and available to enforce all of the obligations and conditions required to be performed and observed under each Rate Agreement by the Commission, in each case to the extent material to the payment of or security for the Bonds or Parity Obligations.

4. An Authorized Officer shall promptly notify the Trustee and Co-Trustee in writing of any dispute or default, in each case if determined by the Department to be material to the payment of or security for the Bonds or Parity Obligations, and of each event of default, arising under any Rate Agreement as soon as practicable after the Department has actual knowledge thereof.

5. If the Department shall have defaulted under its obligations contained in any Financing Document, such default is continuing and the Department has failed to enforce such Rate Agreement to the extent it is permitted to do so thereunder, the Co-Trustee shall have the right to enforce such Rate Agreements, as permitted by and subject to such Rate Agreements. All right, title and interest of the Department in, to and under each Rate Agreement is hereby collaterally assigned to the Co-Trustee for the benefit of the Owners of Bonds and the holders or issuers of or other parties to Parity Obligations, to the extent necessary for purposes of such enforcement, subject to the terms of such Rate Agreements. The Co-Trustee agrees to comply with all provisions of any Rate Agreement necessary to enable it to exercise the rights granted by this subsection 5.

**607. Servicing Arrangements; Collection of Revenues.** 1. The Department shall enter into and maintain in effect at all times one or more Servicing Agreements which, in the aggregate, shall provide for all of the following functions and services: transmit or provide

for the transmission of, and distribute, all Power; billing, collection and remittance of all moneys constituting Bond Charges, Power Charges, Direct Access Power Charges or other charges; and all other services related to the foregoing; provided, however, that separate Servicing Agreements may be entered into and maintained for separate functions and services; and provided further, however, that no Servicing Agreement shall be required for any functions or services to the extent such functions or services are performed directly by the Department, subject to the following sentence, or pursuant to an order (“**Servicing Order**”) of the Commission. The Department shall not attempt to assert any authority to perform any such function or service except as permitted under an applicable Servicing Agreement or Servicing Order. The Department shall request such Servicing Orders of the Commission as the Department determines to be necessary or appropriate in connection with the performance of such functions or services and the implementation or enforcement of any Servicing Agreement.

2. The Department shall not voluntarily consent to or permit any amendment, termination or suspension, or waive any provision, of any Servicing Arrangement unless the Department shall determine, in a written determination signed by an Authorized Officer and delivered to the Trustee, that the same will not have a material adverse affect on the ability of the Department to comply with the provisions of the Indenture, including, but not limited to, Section 605.

3. The Department shall perform and observe all of the obligations and conditions required to be performed and observed by it under each Servicing Arrangement, and shall take such actions from time to time as shall be necessary and available to enforce all of the obligations and conditions required to be performed and observed under each Servicing Agreement by the other party thereto, and to enforce each Servicing Order in accordance with its terms, in each case to the extent material to the payment of and security for the Bonds or Parity Obligations.

4. An Authorized Officer shall promptly notify the Trustee and Co-Trustee in writing of any dispute or default, in each case if determined by the Department to be material to the payment of or security for the Bonds or Parity Obligations, and of each “event of default,” arising under any Servicing Arrangement as soon as practicable after the Department has actual knowledge thereof.

5. If an Event of Default shall have occurred and be continuing, the Co-Trustee shall have the right to enforce the Servicing Arrangements to the extent the Department fails to do so, as permitted by and subject to such Servicing Arrangements. All right, title and interest of the Department in, to and under the Servicing Arrangements is hereby collaterally assigned to the Co-Trustee for the benefit of the Owners of Bonds, the holders of Interim Financing Notes and the holders or issuers of or other parties to Parity Obligations, to the extent necessary for purposes of such enforcement, subject to the terms of such Servicing Arrangements. If the Department shall have defaulted under its obligations contained in any Financing Document and such default is continuing, the Co-Trustee shall have the right to request Servicing Orders with respect to the Servicing Agreements or the functions and services described in subsection 1 of this Section 607, and to request the Commission to enforce the same, to the extent the Department fails to do so. All right, title and interest of the Department in, to and under the Rate Agreements, insofar as it relates to such requests and enforcement, is

hereby collaterally assigned to the Co-Trustee for the benefit of the Owners of Bonds, the holders of Interim Financing Notes and the holders or issuers of or other parties to Parity Obligations, to the extent necessary for purposes of such requests and enforcement, subject to the terms of such Rate Agreements. The Co-Trustee agrees to comply with all provisions of any Rate Agreement necessary to enable it to exercise the rights granted by this subsection 5, and in doing so shall be subject to the provisions of the Indenture.

6. The Department shall use its best efforts to collect or cause to be collected all moneys due and payable to the Department, which, upon receipt by the Department, would constitute Revenues, as soon as practicable after the same are due and payable; provided, however, that nothing contained in the Indenture shall prohibit the effectuation of the program provided by Executive Order No. D-56-02 dated May 23, 2002, including the financing thereof, as provided thereby.

All right, title and interest of the Department in, to and under the Servicing Arrangements to amounts payable, and payments, to the Department pursuant to and under the Servicing Arrangements are hereby collaterally assigned to the Trustee and Co-Trustee for the benefit of the Owners of Bonds, the holders of Interim Financing Notes and the holders or issuers of or other parties to Parity Obligations, subject to the terms of such Servicing Arrangements.

7. The Department shall furnish copies of each report delivered to it pursuant to the Servicing Arrangements relating to compliance of an Electrical Corporation thereunder, promptly after receipt by the Department, to the Trustee and the Co-Trustee (neither of which shall have any duty to review or inspect such reports) and each Rating Agency.

**608. Accounts and Reports.** The Department shall keep or cause to be kept proper books of record and account in which complete and correct entries shall be made of its transactions pursuant to the Enabling Measures and the Indenture, including, but not limited to, the Electric Power Fund and each account and subaccount therein. Such books shall be kept in accordance with generally acceptable accounting principles and shall be audited at least annually by independent certified public accountants selected by the Department. A copy of each audit report, including statements of net assets, activities and cash flow, and notes to financial statements, shall be filed with the Trustee within six months after the close of each Fiscal Year, and sent to any Owner filing with the Department a written request therefor.

**609. Consultants.** The Department shall employ a Consultant or Consultants to examine the sufficiency of the Revenue Requirements and the sufficiency of current charges relating to Power sold by the Department, including, but not limited to, Bond Charges and Power Charges, at least annually and from time to time as shall be necessary to assist the Department in complying with Section 605, and to make any certification and perform such other acts as may be required under the Indenture or otherwise at the direction of the Department. The Department shall give due consideration to, but shall not be required to accept or implement, the findings and recommendations of its Consultants.

**610. General.** 1. The Department shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Department under the Enabling Measures.

2. Any costs not otherwise authorized to be incurred by the Department pursuant to the Enabling Measures shall not be incurred alternately by means of a reduction to Revenues or any other type of credit having a similar effect.

3. Upon the date of issuance of any of the Bonds, all conditions, acts and things required by law and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of such Bonds shall exist, have happened and have been performed and the issuance of such Bonds, together with all other indebtedness of the Department, shall be within every debt and other limit prescribed by the laws of the State.

**611. Non-Impairment Covenant of State; Extension of Sunset Date.** 1. The State pledges and undertakes that while any obligations of the Department incurred under Division 27 of the State Water Code, including without limitation the Indenture, the Bonds and Parity Obligations, remain outstanding and not fully performed or discharged, the rights, powers, duties, and existence of the Department and the Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of or parties to such obligations. This pledge and undertaking is included herein pursuant to the authority to do so contained in Section 80200(e) of the State Water Code.

2. Any extension of the January 1, 2003, termination date for the authority of the Department to contract for the purchase of Power, contained in Section 80260 of the State Water Code, shall not constitute a violation of the foregoing pledge and undertaking of the State, nor shall any such extension constitute a violation of or default under the Indenture.

**612. Covenant Relating to Retirement of Bonds.** The Department shall schedule the maturity of, redeem or otherwise retire Bonds in accordance with the Indenture at such times and in such amounts as are necessary to assure that the Department complies with Paragraph II of the Summary of Material Terms referred to in Section 7.10 of the Rate Agreement, as amended by Paragraph 18 of the Amended and Restated Addendum to Summary of Material Terms of Financing Documents dated as of August 8, 2002.

**613. Continuing Disclosure.** The Department will post on its website, so long as it maintains a website, (i) within forty-five (45) days of the end of each fiscal year quarter except the fourth quarter, unaudited financial statements of the Department relating to its Electric Power Fund for such quarter, (ii) within one hundred twenty (120) days after the end of each fiscal year, audited financial statements of the Department relating to its Electric Power Fund for such fiscal year, and (iii) each Revenue Requirement filing made by the Department with the Commission pursuant to Section 605. The Department shall send notice of each such posting by first class mail to any Person filing with the Chief, Division of Fiscal Services, or a Deputy Controller of the Department a written request therefor, to the address specified by such Person, unless and until it appears to the Department that notices sent are not being delivered. If the Department no longer maintains a website, the Department will send such documents by first class mail to any Person filing with the Chief, Division of Fiscal Services, or Deputy Controller

of the Department a written request therefor, to the address specified by such Person, unless and until it appears to the Department that documents sent are not being delivered.

Notwithstanding anything in Article X of the Indenture to the contrary (including but not limited to the definition of Event of Default and limitations on the exercise of remedies), (i) any failure on the part of the Department to comply with the provisions of this Section 613 shall not be deemed to be a default or an Event of Default under the Indenture, and (ii) the Trustee may (and, at the request of the Owners of at least 50% in aggregate principal amount of Outstanding Bonds, shall), or any Owner or Beneficial Owner of the Bonds may (unless the Department has so complied within 20 days after written notice from the Trustee, such Owner or Owners, or such Beneficial Owner or Beneficial Owners, as the case may be, of the Department's failure to comply) seek specific performance by court order, to cause the Department to comply with its obligations under this Section 613, as the sole remedy. For this purpose, "Beneficial Owner" means any Person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories and other intermediaries).

[End of Article VI]



## ARTICLE VII

### CONCERNING THE TRUSTEE, CO-TRUSTEE, PAYING AGENTS AND REGISTRAR

**701. Acceptance of Duties by Trustee and Co-Trustee.** The execution of this Indenture by the Trustee and Co-Trustee shall constitute the Trustee's and the Co-Trustee's acceptance of the duties and obligations imposed upon them by the Indenture.

**702. Duties and Liability of Trustee and Co-Trustee.** 1. Prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee or of the Co-Trustee has written notice hereunder, and after the curing or waiver of any Event of Default which may have occurred:

(a) the Trustee and the Co-Trustee undertake to perform such duties and only such duties as are specifically set forth in the Indenture, in the case of the Co-Trustee including, but not limited to, the enforcement of Rate Agreements and Servicing Arrangements pursuant to Sections 606 and 607, respectively, and no implied covenants or obligations shall be read into the Indenture against the Trustee or the Co-Trustee; and

(b) in the absence of bad faith on its part, the Trustee and the Co-Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee or the Co-Trustee and conforming to the requirements of the Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee or the Co-Trustee, the Trustee or the Co-Trustee, as the case may be, is under a duty to examine same to determine whether or not they conform to the requirements of the Indenture.

2. In case an Event of Default of which a Responsible Officer of the Trustee or the Co-Trustee has written notice hereunder has occurred and is continuing, the Trustee and the Co-Trustee shall exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use in the conduct of such Person's own affairs.

3. No provision of the Indenture shall be construed to relieve the Trustee or the Co-Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(a) this subsection 3 shall not be construed to limit the effect of subsection 1 of this Section 702;

(b) the Trustee and the Co-Trustee are not liable for any error of judgment made in good faith by a Responsible Officer of the Trustee or of the Co-Trustee unless it is proven that the Trustee or the Co-Trustee, as the case may be, was negligent in ascertaining the pertinent facts;

(c) the Trustee and the Co-Trustee are not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of the applicable percentage of Bonds then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Co-Trustee, or exercising any trust or power conferred upon the Trustee or the Co-Trustee under the Indenture;

(d) no provision of the Indenture shall require either the Trustee or the Co-Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or indemnity against such risk or liability is not assured to its satisfaction;

(e) subject to paragraph (b) of subsection 1 of Section 702, the Trustee and the Co-Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee or the Co-Trustee, in their discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(f) the Trustee and the Co-Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer of the Trustee or of the Co-Trustee, respectively, shall have received written notice from an Owner or the Department or the other such trustee;

(g) neither the Trustee nor the Co-Trustee nor any of their respective directors, officers, employees or agents shall be personally liable for any action taken, suffered or omitted by the Trustee or the Co-Trustee in good faith and believed by it to be authorized or within the discretion or rights of powers conferred upon the Trustee or the Co-Trustee, as the case may be, by this Indenture; and

(h) the Trustee and the Co-Trustee each may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians, or nominees.

4. Whether or not expressly so provided, every provision of the Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee and the Co-Trustee is subject to the provisions of this Section 702.

5. The rights and protections afforded to the Trustee and Co-Trustee pursuant to this Article VII shall also be afforded to the Trustee and Co-Trustee acting in the capacities of Paying Agent and Registrar with respect to any Bonds.

6. The Trustee and the Co-Trustee, including either or both of them in their capacity as Paying Agent or Registrar, as applicable, shall cooperate to the extent necessary to permit the proper and timely performance of their respective duties under the Indenture.

**703. Paying Agents and Registrars; Appointment and Acceptance of Duties.** 1. The Trustee is hereby appointed a Paying Agent and Registrar for the Bonds, except as may be provided otherwise by Supplemental Indenture for any Series of Bonds, and the execution of this Indenture by the Trustee shall constitute the Trustee's acceptance of the duties imposed upon it as such Paying Agent and Registrar by the Indenture.

2. The Department may at any time or from time to time appoint one or more other Paying Agents and Registrars in the manner and subject to the conditions set forth in Section 713 for the appointment of a successor Paying Agent or Registrar. Each such other Paying Agent and Registrar shall signify its acceptance of the duties and obligations imposed upon it by the Indenture by executing and delivering to the Department and to the Trustee a written acceptance thereof.

**704. Responsibilities of Fiduciaries.** The recitals of fact contained in the Indenture and in the Bonds shall be taken as the statements of the Department and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of the Indenture or of any Bonds issued thereunder or in respect of the security afforded by the Indenture, and no Fiduciary shall incur any liability in respect thereof, except that the Registrar shall, subject to Section 702, be liable for authenticating Bonds other than in accordance with the terms of the Indenture. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Bonds for value or the application of the proceeds thereof or the application of any moneys paid to the Department. No Fiduciary shall be under any responsibility or duty with respect to the application of any moneys paid to any other Fiduciary. No Fiduciary shall be liable in connection with the performance of its duties under the Indenture, or for any losses incurred upon the sale or redemption of any securities purchased for or held in any fund under the Indenture, except in each case for its own willful misconduct, negligent action or negligent failure to act.

**705. Evidence on Which Fiduciaries May Act.** 1. Subject to paragraph (a) of subsection 1 of Section 702, each Fiduciary shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel, who may or may not be counsel to the Department or the State, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it under the Indenture in good faith and in accordance therewith.

2. Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under the Indenture, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of the Indenture; but in its discretion the Fiduciary may in lieu thereof accept other evidence of

such fact or matter or may require such further or additional evidence as to it may seem reasonable.

3. Except as otherwise expressly provided in the Indenture, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Department to any Fiduciary shall be sufficiently executed if executed in the name of the Department by an Authorized Officer.

**706. Compensation.** The Department shall pay to each Fiduciary from time to time reasonable compensation for all services rendered under the Indenture, and also all reasonable expenses, charges, counsel fees and other disbursements, including, but not limited to, those of its attorneys and agents, incurred in and about the performance of their powers and duties under the Indenture. The Department further agrees to indemnify and save each Fiduciary and its officers, directors, agents, and employees harmless against any costs, claims, expenses and liabilities of any kind whatsoever which any of them may incur in the exercise and performance of the powers and duties of such Fiduciary hereunder and which are not due to the willful misconduct, negligence or bad faith of the Person claiming indemnification hereunder or under any other documents or agreements related to the Bonds. The obligations of this Section 706 shall survive the discharge of this Indenture.

**707. Certain Permitted Acts.** Any Fiduciary may become the Owner of any Bonds, the holder of Interim Financing Notes or the holder or issuer of or other party to Parity Obligations or any other obligations of the Department, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, holders or issuers of or other parties to Parity Obligations or holders or issuers of or other parties to any other obligations of the Department or to effect or aid in any reorganization growing out of the enforcement of the Bonds, Parity Obligations or any other obligations of the Department or the Indenture, whether or not any such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding or the holders or issuers of or other parties to Parity Obligations.

**708. Resignation of Co-Trustee.** The Co-Trustee may at any time resign and be discharged of the duties and obligations created by the Indenture by giving not less than 90 days' written notice to the Department and the Trustee, and the Trustee thereupon shall mail notice thereof to the Owners of the Bonds, specifying the date when such resignation shall take effect, at least thirty (30) days prior to the effective date, provided that such resignation shall take effect upon the later of (i) the day specified in such notice and (ii) the day a successor shall have been appointed by the Department or the Owners of Bonds as provided in Section 710.

**709. Removal of Co-Trustee.** The Co-Trustee may be removed at any time by an instrument or concurrent instruments in writing, filed with the Trustee and the Co-Trustee, and signed by the Owners of a majority in principal amount of the Bonds then Outstanding or their attorneys-in-fact duly authorized, excluding any Bonds held by or for the account of the Department; provided, however, that the Co-Trustee may be removed only for cause unless and until an Event of Default shall have occurred and be continuing hereunder. In addition, so long

as no Event of Default shall have occurred and be continuing hereunder and the Co-Trustee is not pursuing any right or remedy available to it pursuant to Section 1001, the Co-Trustee may be removed by the Department at any time for failure to provide reasonably acceptable services, failure to charge reasonably acceptable fees or any other reasonable cause, all as determined by a written determination signed by an Authorized Officer and filed with the Trustee and the Co-Trustee, which determination shall be conclusive. Any such removal shall not be effective until a successor shall have been appointed by the Department or the Owners of Bonds as provided in Section 710.

**710. Appointment of Successor Co-Trustee.** 1. In case at any time the Co-Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Co-Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Co-Trustee, or of its property or affairs, a successor may be appointed by the Owners of a majority in principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of the Department, by an instrument or concurrent instruments in writing signed and acknowledged by such Owners of Bonds or by their attorneys-in-fact duly authorized and delivered to such successor Co-Trustee, notification thereof being given to the Department, the Trustee and the predecessor Co-Trustee; provided, nevertheless, that unless a successor Co-Trustee shall have been appointed by the Owners of Bonds as aforesaid, the Department by a duly executed written instrument signed by an Authorized Officer shall forthwith appoint a Co-Trustee to fill such vacancy until a successor Co-Trustee shall be appointed by the Owners of Bonds as authorized in this Section 710. The Department shall mail, or shall cause the Trustee to mail, notice of any such appointment made by it to all Owners within twenty (20) days after such appointment. Any successor Co-Trustee appointed by the Department shall, immediately and without further act, be superseded by a Co-Trustee appointed by the Owners of Bonds.

2. If in a proper case no appointment of a successor Co-Trustee shall be made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Co-Trustee shall have given to the Department written notice as provided in Section 708 or after a vacancy in the office of the Co-Trustee shall have occurred by reason of the Department's inability to act, the Trustee, the Co-Trustee or the Owner of any Bond may apply to any court of competent jurisdiction to appoint a successor Co-Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Co-Trustee.

3. Any Co-Trustee appointed under the provisions of this Section 710 in succession to the Co-Trustee shall be a Bank, as defined in clause (i) or (ii) of the definition thereof, doing business and having an office in the State and having a capital and surplus aggregating at least \$100,000,000, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Indenture. The Department shall comply with Section 7.9 of the Rate Agreement in appointing a successor Co-Trustee.

**711. Transfer of Rights and Property to Successor Co-Trustee.** Any successor Co-Trustee appointed under the Indenture shall execute, acknowledge and deliver to its predecessor Co-Trustee, and also to the Department and to the Trustee, an instrument accepting such appointment, and thereupon such successor Co-Trustee, without any further act,

deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Co-Trustee, with like effect as if originally named as Co-Trustee; but the Co-Trustee ceasing to act shall nevertheless, on the written request of the Department, or of the successor Co-Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Co-Trustee all the right, title and interest of the predecessor Co-Trustee in and to any property held by it under the Indenture, and shall pay over, assign and deliver to the successor Co-Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Department be required by such successor Co-Trustee for more fully and certainly vesting in and confirming to such successor Co-Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Department. Any successor Co-Trustee shall promptly notify the Registrar and the Paying Agents of its appointment as Co-Trustee.

**712. Merger or Consolidation.** Any company into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a Bank as defined in clause (i) or (ii) of the definition thereof, and, in the case of any successor Co-Trustee, shall meet the requirements of paragraph 3 of Section 710, in the case of a successor Paying Agent, shall meet the requirements of paragraph 1 of Section 713, and shall be authorized by law to perform all the duties imposed upon it by the Indenture, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

**713. Resignation or Removal of Paying Agent or Registrar; Appointment of Successor.** 1. Any Paying Agent or Registrar may at any time resign and be discharged of the duties and obligations created by the Indenture by giving at least 60 days' written notice to the Department, the Trustee, the Co-Trustee and the other Paying Agents or Registrars, as the case may be. Any Paying Agent or Registrar (other than the Trustee) may be removed at any time by an instrument filed with such Paying Agent or Registrar, the Trustee and the Co-Trustee, and signed by an Authorized Officer. Any successor Paying Agent or Registrar shall be appointed by the Department, with the approval of the Trustee, and (subject to the requirements of Section 602) shall be a Bank as defined in clause (i) or (ii) of the definition thereof, having a capital and surplus aggregating at least \$10,000,000, or a clearing agency, registered with the Securities and Exchange Commission, which is willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Indenture.

2. In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee.

3. In the event of the resignation or removal of any Registrar, such Registrar shall transfer and deliver all records, certificates and documents held by it as Registrar to its successor, or if there be no successor, to the Trustee.

**714. Coordination and Liability Among Trustee and Co-Trustee.** 1. Anything in the Indenture to the contrary notwithstanding, each of the Trustee and the Co-Trustee shall furnish to the other as soon as practicable (i) a copy of each notice, determination, certificate, request, demand or other instrument filed with it, unless required by another provision of the Indenture to be furnished to both the Trustee and the Co-Trustee, and (ii) notice in writing of any Event of Default, or any event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, of which the Trustee or the Co-Trustee has actual knowledge.

2. The Trustee and Co-Trustee shall not be liable for any acts or omissions of the Co-Trustee and Trustee, respectively.

[End of Article VII]

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

**801. Supplemental Indentures Effective Upon Execution and Delivery.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Indenture may be executed by the Department, the Trustee and the Co-Trustee without the consent of or notice to any Owner, which, upon delivery to the other parties thereto and upon satisfaction of the requirements of this Section 801, if any, and Section 805, shall be effective in accordance with its terms:

(1) to prohibit, or provide limitations and restrictions in addition to the limitations and restrictions contained in the Indenture on, the delivery on original issuance of Bonds or the issuance of other evidences of indebtedness;

(2) to add to the covenants and agreements of the Department in the Indenture other covenants and agreements to be observed by the Department which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(3) to add to the limitations and restrictions in the Indenture other limitations and restrictions to be observed by the Department which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(4) to surrender any right, power or privilege reserved to or conferred upon the Department by the Indenture;

(5) to authorize Bonds of a Series and, in connection therewith, specify and determine the matters and things mentioned or referred to in Section 202, and also any other matters and things relative to such Bonds which are not contrary to or inconsistent with the Indenture as theretofore in effect (including without limitation to provide in the Supplemental Indenture authorizing such Bonds that either all or certain specified references in the Indenture to principal or Redemption Price of such Bonds shall be deemed to include reference, on a parity basis, to the Purchase Price of such Bonds) or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first delivery of such Bonds;

(6) to authorize Subordinated Indebtedness and provide with respect thereto to the extent provided by, and otherwise not inconsistent with, the Indenture theretofore in effect;

(7) to subject Subordinated Obligations and Subordinated Indebtedness to the lien on and pledge of the Trust Estate pursuant to Section 501 on a subordinate basis.

(8) to set forth or determine any matters which this Indenture specifies may be set forth or determined by a Supplemental Indenture, except as provided by Sections 802 and 804;



(9) to confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture, of any additional security other than that previously granted or pledged under the Indenture;

(10) to modify, amend or supplement the Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America, and, if the Department so determines, to add hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar Federal statute;

(11) to comply with regulations and procedures as are from time to time in effect relating to any book-entry-only system, whether within or without the United States, for the registration of beneficial ownership interests in Bonds;

(12) to evidence the assignment and transfer of rights, and the delegation of duties and obligations, of the Department by operation of law to another department, agency or instrumentality of the State that has indicated in writing its willingness to accept the rights of the Department and to assume and discharge the duties and obligations of the Department;

(13) to modify any of the provisions of the Indenture in any other respect whatever with respect to any Bonds, provided that (i) (a) such modification relates only, and is to be effective prior to the issuance of, such Bonds, or (b) such modification relates only, and is to be effective only upon the remarketing of, such Bonds in connection with an optional or mandatory tender thereof for purchase by or on behalf of the Department, and (ii) such modification is disclosed in an offering or reoffering document applicable to such issuance or remarketing; or

(14) to modify any of the provisions of the Indenture in any other respect whatever, provided that such modification shall be, and shall be expressed to be, effective only after all Bonds Outstanding, outstanding Interim Financing Notes and outstanding or unpaid Parity Obligations at the date of the execution and delivery of such Supplemental Indenture shall cease to be Outstanding or owing, as the case may be.

**802. Supplemental Indentures Effective Upon Execution and Delivery and Consent of Trustee.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Indenture may be executed by the Department, the Trustee and the Co-Trustee without the consent of or notice to any Owner, which, upon delivery to the other parties thereto and the satisfaction of the requirements of Section 805, but subject to Section 803, shall be effective in accordance with its terms:

(1) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Indenture; or

(2) to insert such provisions, or to make such other amendments to the Indenture, as are necessary or desirable which are not materially adverse to the rights

under the Indenture of the Owners of Bonds, the holders of Interim Financing Notes and the holders or issuers of or other parties to Parity Obligations.

**803. Trustee and Co-Trustee Required to Execute, and Consents Required for, Certain Supplemental Indentures.** The Trustee and the Co-Trustee shall not refuse to execute any Supplemental Indenture except (i) the execution and delivery by the Trustee of a Supplemental Indenture described in Section 802 shall be subject to its consent, or (ii) to the extent permitted by subsection 4 of Section 805.

**804. Supplemental Indentures Effective with Consent of Owners of Bonds.** At any time or from time to time, a Supplemental Indenture may be executed by the Department, the Trustee and the Co-Trustee, subject to consent by Owners of Bonds in accordance with and subject to the provisions of Article IX, which Supplemental Indenture, upon delivery to the other parties thereto and upon compliance with the provisions of Section 805 and Article IX, shall become fully effective in accordance with its terms as provided in Article IX.

**805. General Provisions.** 1. The Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article VIII and Article IX. Nothing in this Article VIII or Article IX contained shall affect or limit the right or obligation of the Department to execute and deliver to any Fiduciary any instrument which elsewhere in the Indenture it is provided shall be delivered to said Fiduciary.

2. Every Supplemental Indenture when delivered by the Department to the Trustee and the Co-Trustee shall be accompanied by a Counsel's Opinion substantially to the effect that (i) such Supplemental Indenture has been duly and lawfully executed and delivered by the Department in accordance with the provisions of the Indenture, is authorized or permitted by the Act and the Indenture, and is valid and binding upon the Department and enforceable in accordance with its terms, (ii) the execution and delivery of such Supplemental Indenture, in and of itself, will not adversely affect the exclusion of interest on any Tax-Exempt Bonds from gross income for Federal income tax purposes, and (iii) no registration or qualification of such Supplemental Indenture is required under any applicable State or Federal securities law, or that such registration or qualification has been effected.

3. The Trustee and the Co-Trustee each is hereby authorized to accept the delivery of any Supplemental Indenture referred to and permitted or authorized by Section 801, 802, 803 or 804 and to make all further agreements and stipulations which may be therein contained, and the Trustee and the Co-Trustee, in taking such action, shall be fully protected in relying on an opinion of counsel (which may be a Counsel's Opinion) that such Supplemental Indenture is authorized or permitted by the provisions of the Indenture.

4. No Supplemental Indenture shall change or modify any of the rights or obligations of any Fiduciary without its written assent thereto.

[End of Article VIII]

## ARTICLE IX

### AMENDMENTS

**901. Mailing.** Any provision in this Article for the mailing of a notice or other paper to Owners of Bonds shall be fully complied with if it is mailed postage prepaid only (i) to each registered owner of Bonds then Outstanding at such Owner's address, if any, appearing upon the registry books of the Department, and (ii) to the Trustee.

**902. Powers of Amendment.** Any modification or amendment of the Indenture and of the rights and obligations of the Department and of the Owners, in any particular, may be made by a Supplemental Indenture, with the written consent given as provided in Section 903, (i) of the Owners of a majority in principal amount of the Bonds Outstanding at the time such consent is given, and (ii) in case less than all of the Bonds then Outstanding are affected by the modification or amendment, of the Owners of a majority in principal amount of the Bonds so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as particular Bonds remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section. No such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Owner of such Bond, (b) reduce the percentages or otherwise affect the classes of Bonds the consent of the Owners of which is required to waive an Event of Default or otherwise effect any such modification or amendment, (c) create a preference or priority of any Bond or Bonds over any other Bond or Bonds, without the consent of the Owners of all such Bonds, (d) create a lien prior to or on parity with the lien of the Indenture, without the consent of the Owners of all of the Bonds then Outstanding, except to the extent permitted by the Indenture, or (e) change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, a Bond shall be deemed to be affected by a modification or amendment of the Indenture if the same materially and adversely affects the rights of the Owner of such Bond. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment particular Bonds would be affected by any modification or amendment of the Indenture and any such determination shall be binding and conclusive on the Department and all Owners of Bonds.

**903. Consent of Owners of Bonds.** A Supplemental Indenture making a modification or amendment permitted by the provisions of Section 902 may at any time be executed by the Department, the Trustee and the Co-Trustee, to take effect when and as provided in this Section. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Owners for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Department to the Owners (but failure to mail such copy and request shall not affect the validity of the Supplemental Indenture when consented to as in this Section provided). Such Supplemental Indenture shall not be effective unless and until (a) there shall have been filed with the Trustee (i) the written consents of Owners of the percentages of Outstanding Bonds specified in Section 902 and (ii) a Counsel's Opinion stating that such Supplemental Indenture has been duly and lawfully executed and

delivered by the Department and filed by the Department in accordance with the provisions of the Indenture, is authorized or permitted by the Indenture, and is valid and binding upon the Department and enforceable in accordance with its terms, and (b) a notice shall have been mailed to Owners as hereinafter in this Section 903 provided. Any such consent, including without limitation any consent provided by the initial purchaser of a Bond from the Department, shall be binding upon the Owner of the Bonds giving such consent and, anything in Section 1102 to the contrary notwithstanding, upon any subsequent Owner of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Owner has notice thereof). At any time after the Owners of the required percentages of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Department, and retain on file, a written statement that the Owners of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, notice, stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture executed by the parties hereto as of a stated date, a copy of which is on file with the Trustee) has been consented to by the Owners of the required percentages of Bonds and will be effective as provided in this Section 903, shall be given to Owners of Bonds by the Trustee by mailing such notice to Owners of Bonds (but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 903 provided) and shall be filed with the Co-Trustee. The Trustee shall retain on file proof of the mailing of such notice. A record, consisting of the papers required or permitted by this Section 903 to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Indenture making such amendment or modification shall be deemed conclusively binding upon the Department, the Fiduciaries and the Owners of all Bonds at the expiration of 40 days after the mailing of such last-mentioned notice, except in the event of a final decree of a court of competent jurisdiction setting aside such Supplemental Indenture in a legal action or equitable proceeding for such purpose commenced within such 40-day period; provided, however, that any Fiduciary and the Department during such 40-day period and any such further period during which any such action or proceeding may be pending shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Indenture as they may deem expedient.

**904. Modifications by Unanimous Consent.** The terms and provisions of the Indenture and the rights and obligations of the Department and of the Owners of Bonds may be modified or amended in any respect upon the execution by the Department, the Trustee and the Co-Trustee of a Supplemental Indenture, the filing of a fully executed copy with the Trustee and the Co-Trustee, and the consent of the Owners of all of the Bonds then Outstanding, such consent to be given as provided in Section 903; provided, however, that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary without the filing with the Trustee of the written assent thereto of such Fiduciary in addition to the consent of the Owners of Bonds.

**905. Exclusion of Bonds.** Bonds owned or held by or for the account of the Department shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, and the Department shall not be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article. At the time of any consent or other action taken under this Article, the Department

shall furnish the Trustee a certificate of an Authorized Officer, upon which the Trustee may rely, describing all Bonds so to be excluded.

**906. Notation on Bonds.** Bonds delivered after the effective date of any action taken as in Article VIII or this Article may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved by the Department and the Trustee as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for the purpose at the office of the Trustee designated for such purpose, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Department or the Trustee shall so determine, new Bonds so modified as in the opinion of the Trustee and the Department to conform to such action shall be prepared and delivered, and upon demand of the Owner of any Bond then Outstanding shall be exchanged, without cost to such Owners of Bonds for Bonds of the same Series, maturity and interest rate then Outstanding, upon surrender of such Bonds.

[End of Article IX]

## ARTICLE X

### EVENTS OF DEFAULT; REMEDIES ON DEFAULT

**1001. Events of Default.** Any one or more of the following events shall constitute “Events of Default”:

(1) if default shall be made in the due and punctual payment of the principal or Redemption Price of any Bond, or in the due and punctual payment of the principal or redemption price, if any, of any Parity Obligation when and as the same shall become due and payable, whether at maturity or by call for redemption, or otherwise;

(2) if default shall be made in the due and punctual payment of any installment of interest on any Bond or of interest, if any, on any Parity Obligation when and as such interest installment shall become due and payable, and such default shall continue for a period of 5 days;

(3) if default shall be made by the Department in the performance or observance on its part of any of the covenants or agreements contained in subsection 3 of Section 605, Section 606 or Section 607, and such default shall continue for a period of 10 days after written notice thereof to the Department by the Trustee or the Co-Trustee, or to the Department, to the Trustee and the Co-Trustee by the Owners of a majority in principal amount of the Bonds Outstanding; provided, however, that no such default relating to subsection 3 of Section 605 shall constitute an Event of Default if and for so long as the Commission is taking action to cure the Department’s default pursuant to Section 4.1(a) of the 2002 Rate Agreement or otherwise;

(4) if an “event of default,” as defined in any Rate Agreement, on the part of the Commission shall have occurred and be continuing;

(5) if an “event of default,” as defined in the Credit and Security Agreement or any Parity Obligation, on the part of the Department shall have occurred and be continuing;

(6) if default shall be made by the Department in the performance or observance on its part of any other of the covenants or agreements contained in the Indenture or in the Bonds to be performed, other than as specified in clauses (1) through (3) above, and such default shall continue for a period of 60 days after written notice thereof to the Department by the Trustee or Co-Trustee, or to the Department, the Trustee and the Co-Trustee by the Owners of a majority in principal amount of the Bonds Outstanding; provided, however, that if such default shall be such that it cannot be remedied by the Department within such 60 day period, it shall not constitute an Event of Default if corrective action is instituted by the Department within such period and diligently pursued by the Department until the default is remedied; or

(7) With respect to a Series of Bonds, any additional events as may be specified in the Supplemental Indenture authorizing the issuance of such Series.

**1002. Accounting and Examination of Records after Default.** 1. The Department covenants that if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Department relating to its transactions pursuant to the Enabling Measures and the Indenture, and all other records relating to its transactions pursuant to the Enabling Measures and the Indenture, the Bonds and Parity Obligations shall at all times be subject to the inspection and use of the Trustee and Co-Trustee and of their agents and attorneys, including, but not limited to, the engineer, consultant or firm of engineers or consultants appointed pursuant to Section 1003.

2. The Department covenants that if an Event of Default shall happen and shall not have been remedied, the Department, upon demand of the Trustee or Co-Trustee, will account, as if it were the trustee of an express trust, for the Trust Estate for such period as shall be stated in such demand.

**1003. Application of Revenues and Other Moneys after Default.** 1. During the continuance of an Event of Default, the Trustee shall take control of the Operating Account, the Priority Contract Account, the Operating Reserve Account and the Administrative Cost Account and apply all amounts on deposit therein, Revenues and the income therefrom to payments as follows and in the following order:

(i) The reasonable and proper charges and expenses of the Trustee and the Co-Trustee (including, but not limited to, reasonable legal fees and expenses and charges and expenses of any management consultant or consulting engineer, or firm of either thereof, selected by the Trustee or the Co-Trustee pursuant to paragraph (ii) of this subsection 1). Such charges and expenses shall only be paid from Power Charge Revenues or Bond Charge Revenues.

(ii) The amounts required for reasonable and necessary Operating Expenses, including, but not limited to, reasonable and necessary reserves and working capital. The Trustee or the Co-Trustee may retain a management consultant or consulting engineer, or firm of either thereof, of recognized standing (who may be an engineer or management consultant, or firm of either thereof, retained by the Department for other purposes) for the purpose of rendering advice with respect to such matters. For this purpose the books of record and account of the Department shall at all times be subject to the inspection of such consultant, engineer or firm of consultants or engineers during the continuance of such Event of Default.

(iii) The interest and principal or Redemption Price then due on the Bonds, and the interest and principal components of Parity Obligations (which, in the case of Qualified Swaps, shall consist of scheduled payments and termination payments, respectively), as follows:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds and the interest component of Parity Obligations, in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same

date, then to the payment thereof ratably, according to the amounts due thereon, to the Persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price of any Bonds and the unpaid principal component of Parity Obligations, which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Bonds and the principal component of Parity Obligations, due on any date, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date, to the Persons entitled thereto, without any discrimination or preference.

2. If and whenever all overdue installments of interest on all Bonds and Parity Obligations, together with the reasonable and proper charges and expenses of the Trustee and the Co-Trustee, and all other sums payable by the Department under the Indenture, including, but not limited to, the principal and Redemption Price of and accrued unpaid interest on all Bonds and Parity Obligations which shall then be payable, shall either be paid by or for the account of the Department, or provision satisfactory to the Trustee and the Co-Trustee shall be made for such payment, and all defaults under the Indenture or the Bonds, the Credit and Security Agreement and all agreements, instruments or notes evidencing Parity Obligations shall be made good or secured to the satisfaction of the Trustee and the Co-Trustee or provision deemed by the Trustee and the Co-Trustee to be adequate shall be made therefor, all Revenues shall thereafter be applied as provided in Article V and the Trustee shall return control of the Operating Account, the Priority Contract Account, the Operating Reserve Account, the Bond Charge Collection Account and the Administrative Cost Account to the Department. No such resumption of the application of Revenues as provided in Article V shall extend to or affect any subsequent default under the Indenture, the Credit and Security Agreement and all agreements, instruments or notes evidencing Parity Obligations, or impair any right consequent thereon.

**1004. Proceedings Brought by Co-Trustee.** 1. If (i) an Event of Default shall happen and shall not have been remedied, and (ii) whether or not an Event of Default has happened or shall have been remedied, in the event of any failure of the Department to pay into the Operating Account, as and when received, Power Charge Revenues as required by Section 503, or to pay into the Bond Charge Collection Account, as and when received, Bond Charge Revenues as required by Section 505, or to collect or cause to be collected Revenues as required by Section 607, or in the event of a violation of the pledge and agreement of the State in Section 611, then and in every such case, the Co-Trustee, by its agents and attorneys, if the Co-Trustee shall deem it advisable, may proceed to protect and enforce its rights and the rights of the Owners of Bonds and the holders or issuers of or other parties to Parity Obligations under the Indenture forthwith by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the Department as if the Department were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the Co-Trustee, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under the Indenture. Notwithstanding the occurrence of an Event of Default, the Co-Trustee shall have only such rights to enforce the Rate Agreements as are set forth in such Rate Agreements.



2. All rights of action under the Indenture may be enforced by the Co-Trustee without the possession of any of the Bonds or the production thereof on the trial or other proceedings, and any such suit or proceedings instituted by the Co-Trustee shall be brought in its name.

3. The Owners of a majority in principal amount of the Bonds at the time Outstanding may direct by instrument in writing the time, method and place of conducting any proceeding for any remedy available to the Co-Trustee, or exercising any trust or power conferred upon the Trustee or the Co-Trustee; provided, however, that the Trustee and the Co-Trustee shall have the right to decline to follow any such direction if the Trustee or the Co-Trustee shall be advised by counsel that the action or proceeding so directed may not lawfully be taken, or if the Trustee or the Co-Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee or the Co-Trustee in personal liability or be unjustly prejudicial to the Owners of Bonds not parties to such direction.

4. Upon commencing a suit in equity or upon other commencement of judicial proceedings by the Co-Trustee to enforce any right under the Indenture, the Co-Trustee shall be entitled to exercise any and all rights and powers conferred in the Indenture and provided to be exercised by the Co-Trustee upon the occurrence of an Event of Default.

5. Regardless of the happening of an Event of Default, and in addition to the enforcement powers granted under Section 1004 pursuant to clause (ii) of subsection 1 thereof, the Co-Trustee shall have power to or, if requested in writing by the Owners of a majority in principal amount of the Bonds then Outstanding, and furnished with security and indemnity satisfactory to it, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture by any acts which may be unlawful or in violation of the Indenture, and such suits and proceedings as the Co-Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Owners of Bonds. The Co-Trustee shall have only such rights to enforce the Rate Agreements as are set forth in such Rate Agreements.

**1005. Restriction on Action by the Owners of Bonds.** 1. No Owner shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of the Indenture or the execution of any trust under the Indenture or for any remedy under the Indenture, unless such Owner shall have previously given to the Trustee and the Co-Trustee written notice of the happening of an Event of Default, as provided in this Article, and the Owners of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and the Co-Trustee, and shall have offered the Co-Trustee reasonable opportunity, either to exercise the powers granted in this Section or to institute such action, suit or proceeding in its own name, and unless such Owners shall have offered to the Co-Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Co-Trustee shall have refused to comply with such request within a reasonable time; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture, except in the manner therein provided; and that all proceedings at law or in equity to

enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of all Owners of the Outstanding Bonds.

2. Nothing in the Indenture or in the Bonds shall affect or impair the obligation of the Department, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of and interest on the Bonds to the respective Owners thereof, or affect or impair the right of action, which is also absolute and unconditional, of any Owner to enforce such payment of such Owner's Bond.

**1006. Remedies not Exclusive.** No remedy by the terms of the Indenture conferred upon or reserved to the Trustee, the Co-Trustee or the Owners of Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Indenture or existing at law or in equity or by statute.

**1007. Effect of Waiver and Other Circumstances.** 1. No delay or omission of the Trustee, of the Co-Trustee or of any Owner to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein and every power and remedy given by this Article to the Trustee, to the Co-Trustee or to the Owners of Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee, by the Co-Trustee or by the Owners of Bonds.

2. The Owners of a majority in principal amount of the Bonds at the time Outstanding, or their attorneys-in-fact duly authorized, may on behalf of the Owners of all of the Bonds waive any past default under the Indenture and its consequences, except a default in the payment of interest on or principal of or premium on any of the Bonds. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**1008. No Acceleration of Bonds or Parity Obligations.** Anything in the Indenture to the contrary notwithstanding, neither the Trustee nor the Co-Trustee nor the Owners nor the issuer of any Enhancement Facility nor a party to any Swap Obligation shall have the right to accelerate the maturity of any Bond or Parity Obligation. The preceding sentence shall not be construed to prohibit any redemption of Bonds or Parity Obligations at the option of the Owner, holder or issuer thereof or other party thereto, or if required pursuant to any Enhancement Facility, or any optional or mandatory tender of Bonds or Parity Obligations pursuant to the terms thereof, or any early termination of a Qualified Swap (subject to subsection 6 of Section 311).

[End of Article X]

## ARTICLE XI

### MISCELLANEOUS

**1101. Defeasance.** 1. If the Department shall pay or cause to be paid to the Owners of all Bonds then Outstanding the principal or Redemption Price, if any, and interest to become due thereon, to the other parties to the Credit and Security Agreement all amounts payable thereunder, and to the holders or issuers of or other parties to all Parity Obligations all amounts payable thereunder and upon the termination thereof, at the times and in the manner stipulated therein and in the Indenture, then the covenants, agreements and other obligations of the Department to the Owners of Bonds, the other parties to the Credit and Security Agreement, and the holders or issuers of or other parties to all Parity Obligations shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Department, execute and deliver to the Department all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries shall pay over or deliver to the Department all money, securities and funds held by them pursuant to the Indenture which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption, or required to make payments under the Credit and Security Agreement and Parity Obligations.

2. Outstanding Bonds or any portion thereof shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section either (A) as provided in the Supplemental Indenture authorizing their issuance or (B) if (a) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Department shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to mail, as provided in Article IV, notice of redemption on said date of such Bonds, (b) there shall have been irrevocably deposited with the Trustee or other Paying Agent either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee or such Paying Agent at the same time, shall be sufficient, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, to pay when due the principal or Redemption Price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (c) in the event such Bonds are not by their terms maturing or are not to be redeemed within the next succeeding 60 days, the Department shall have given the Trustee, in form satisfactory to it, irrevocable instructions to mail, as soon as practicable, a notice to the Owners of such Bonds that the deposit required by clause (b) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Section, and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price, if applicable, on such Bonds, and (d) in the case of Bonds subject to optional or mandatory tender for purchase prior to the maturity or earlier redemption date specified for its payment pursuant to this Section 1101, the Trustee or such Paying Agent shall have received written confirmation from each Rating Agency to the effect that the deposit and provisions for defeasance made pursuant to this Section 1101 will not, by themselves, result in the withdrawal, suspension or downgrade of any rating issued by such Rating Agency with respect to such Bonds. Neither Defeasance Securities nor moneys deposited with the Trustee or other Paying Agent pursuant to this Section 1101 nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose

other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Bonds; provided, however, that any moneys on deposit with the Trustee or such Paying Agent, (i) to the extent such moneys will not be required at any time for such purpose, shall be deposited in the Bond Charge Collection Account or, if subsection 1 of this Section 1101 applies, paid over to the Department as received by the Trustee or such Paying Agent, free and clear of any trust, lien or pledge securing said Bonds or otherwise existing under the Indenture, and (ii) to the extent such moneys will be required for such purpose on another date, shall, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts sufficient, together with any moneys available to the Trustee or Paying Agent for such purpose, to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be. Notwithstanding any other provision of the Indenture, the Department may, at the time any Bonds are deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section 1101, elect to retain the right to redeem or require the tender of any such Bonds; provided, however, that such Bonds shall at all times comply with the requirements of this Section 1101 for such Bonds to be deemed to have been paid as aforesaid.

3. Anything in the Indenture to the contrary notwithstanding, all instructions by the Department, accepted by the Trustee or any Paying Agent, given pursuant to this Section 1101 to mail notice of redemption of the Bonds of a Series (other than Bonds of such Series which have been purchased by the Trustee at the direction of the Department as therein provided prior to the mailing of such notice of redemption) shall be irrevocable and shall foreclose the exercise by the Department of any other optional redemption right with respect to such Bonds, except that any such instructions may be revoked prior to any deposit pursuant to clause (B)(c) of subsection 2 of Section 1101.

4. Anything in the Indenture to the contrary notwithstanding, any moneys held by a Fiduciary in trust for the payment and discharge of the principal or Redemption Price of or interest on any of the Bonds and amounts payable by the Department under the Credit and Security Agreement and Parity Obligations which remain unclaimed for two years after the date when such principal, Redemption Price, interest or amounts, respectively, have become due and payable, either at their stated maturity or due dates or by call for earlier redemption, if such moneys were held by the Fiduciary at such date, or for two years after the date of deposit of such moneys if deposited with the Fiduciary after the date when such principal, Redemption Price, interest or amounts, respectively, became due and payable, shall, at the written request of the Department, be repaid by the Fiduciary to the Department or such officer, board or body as then may be entitled by law to receive the same, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Owners of Bonds, the other parties to the Credit and Security Agreement and the holders or issuers of or other parties to Parity Obligations, as applicable, shall look only to the Department or such officer, board or body for the payment of such principal, Redemption Price, interest or amounts, respectively. Before being required to make any such payment to the Department, the Fiduciary shall, at the expense of the Department, cause to be mailed to the Owners, holders, issuers or parties entitled to receive such moneys, at their last addresses, if any, appearing upon the registry books or other notice addresses on file with the Fiduciary or the Department, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than thirty (30) days after the date of the mailing, the balance of such moneys then unclaimed

will be returned to the Department or such officer, board or body. The failure of any Owner of Bonds, holders, issuers or parties to receive such notice shall not affect the application of moneys under this subsection.

**1102. Evidence of Signatures of Owners of Bonds and Ownership of Bonds.**

1. Any request, consent, revocation of consent or other instrument which the Indenture may require or permit to be signed and executed by the Owners of Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners of Bonds in person or by their attorneys-in-fact appointed in writing. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any Person of the Bonds shall be sufficient for any purpose of the Indenture (except as otherwise expressly provided in the Indenture) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(1) The fact and date of the execution by any Owner or such Owner's attorney-in-fact of such instrument may be proved by the certificate, which need not be acknowledged or verified, of an officer of a Bank or of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership such certificate or affidavit shall also constitute sufficient proof of his authority;

(2) The ownership of Bonds and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

2. Any request or consent by the Owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Department or any Fiduciary in accordance therewith.

**1103. Moneys Held for Particular Bonds.** The amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds or any amount payable under the Credit and Security Agreement or Parity Obligations shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of Bonds, the other parties to the Credit and Security Agreement or the holders or issuers of or other parties to Parity Obligations entitled thereto.

**1104. Preservation and Inspection of Documents.** All documents received by a Fiduciary under the provisions of the Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Department, any other Fiduciary, and any Owners of Bonds and their agents and their representatives, any of whom may make copies thereof.

**1105. Notices to Rating Agencies.** The Department will provide to each Rating Agency, at such addresses as may be specified by such Rating Agency, (i) calendar quarterly statements of the Operating Account balance and the Operating Reserve Account balance, (ii) prompt written notice of each draw on the Operating Reserve Account pursuant to subsection 3 of Section 508 and of each draw on the Debt Service Reserve Account pursuant to subsection 7 of Section 506, and (iii) prompt written notice, given in advance to the extent practicable, of each of the following events: (a) expiration, termination, extension or substitution of each Enhancement Facility, (b) any reduction in amounts of credit or liquidity provided under any Enhancement Facility, (c) changes in the Person instructed to draw on any Enhancement Facility, (d) in the case of Bonds covered by an Enhancement Facility, conversion to an interest rate mode not covered by an Enhancement Facility, (e) material amendments to the Indenture and Enhancement Facilities, (f) defeasance of Bonds pursuant to subsection 2 of Section 1101, and (g) with respect to each Priority Long Term Power Contract, when the Department is no longer financially responsible and when it is no longer financially liable under such contract.

**1106. Parties Interested Herein.** Nothing in the Indenture expressed or implied is intended or shall be construed to confer upon, or to give to any Person or corporation, other than the Department, the Fiduciaries, the Owners of Bonds, the other parties to the Credit and Security Agreement, the issuers of Enhancement Facilities, and the holders, issuers or other parties to Parity Obligations, Subordinated Indebtedness or Subordinated Obligations, any right, remedy or claim under or by reason of the Indenture or any covenant, condition or stipulation thereof, and all the covenants, stipulations, promises and agreements in the Indenture contained by and on behalf of the Department shall be for the sole and exclusive benefit of the Department, the Fiduciaries, the Owners of Bonds, the other parties to the Credit and Security Agreement, the holders or issuers of or other parties to Enhancement Facilities, and the holders or issuers of or other parties to Parity Obligations, Subordinated Indebtedness or Subordinated Obligations.

**1107. No Recourse on Bonds.** No recourse shall be had for the payment of the principal or Redemption Price of or interest on the Bonds or for any amount payable under the Credit and Security Agreement, Parity Obligations, Subordinated Indebtedness or Subordinated Obligations, or for any claim based thereon or on the Indenture, against any member, officer, or employee of the Department or any Person executing the Bonds or executing or entering into the Credit and Security Agreement or any Parity Obligation, Subordinated Indebtedness or Subordinated Obligation.

**1108. Successors and Assigns.** Whenever in the Indenture, the Bonds, the Credit and Security Agreement, any agreement, instrument or note evidencing a Parity Obligation, Subordinated Indebtedness, Subordinated Obligation, or any other obligation of the Department under or pursuant to the Indenture, the Department is named or referred to, it shall be deemed to include its successors and assigns and all the covenants and agreements in the Indenture or in the Bonds or such other obligations contained by or on behalf of the Department shall bind and inure to the benefit of its successors and assigns whether so expressed or not; provided, however, that such successor or assign is permitted by law to assume the Department's obligations thereunder and shall agree to be bound by the terms thereof.

**1109. Business Days.** Unless otherwise provided by a Supplemental Indenture (in the case of Bonds), the Credit and Security Agreement (in the case of Interim Financing

Notes) or the agreement, instrument or note evidencing a Parity Obligation (in the case thereof), if the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in the Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in the Indenture and no interest shall accrue on the payment so deferred during the intervening period.

**1110. Severability of Invalid Provisions.** If any provision of the Indenture is held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other part or circumstance, or of rendering any other provisions or provisions contained in the Indenture invalid, inoperative or unenforceable to any extent whatsoever.

The invalidity of any one or more phrases, sentences, clauses or Sections of the Indenture shall not affect the remaining portions of the Indenture, or any part hereof.

**1111. Governing Law and Venue.** The Indenture shall be governed by and interpreted in accordance with internal laws of the State without regard to conflicts of law principles. All legal actions and proceedings arising from the Indenture or the Bonds shall be brought in the courts of the State located in the County of Sacramento, except as otherwise may be expressly agreed to by the Department. The parties to the Indenture, and the Owners by their acceptance of Bonds, consent to and accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts, and to the extent permitted by law, irrevocably waive any objection, including, without limitation, any objection to the laying of venue or based on the grounds of *forum non conveniens*, which they may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, except as otherwise may be agreed to in writing by the Department, the Trustee and the Co-Trustee.

**1112. Signatures and Counterparts.** This Indenture and each Supplemental Indenture may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

**1113. Determination of Department.** This Indenture shall constitute a written determination of the Department under and pursuant to Section 80132(a) of the State Water Code.

[End of Article XI]

[Signature Page Follows]

IN WITNESS WHEREOF, the Department has caused these presents to be executed in its name and behalf by an Authorized Officer and, to evidence its acceptance of the trust hereby created, the Treasurer, as Trustee, and U.S. Bank, N.A., as Co-Trustee, have caused these presents to be signed in their names and behalf by their respective authorized representatives, all as of the day and year first above written.

STATE OF CALIFORNIA DEPARTMENT  
OF WATER RESOURCES

By \_\_\_\_\_  
Director

TREASURER OF THE STATE OF  
CALIFORNIA, as Trustee

By \_\_\_\_\_  
Name:  
Title:

U.S. BANK, N.A., as Co-Trustee

By \_\_\_\_\_  
Name:  
Title: